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            Deposition of RICHARD ENGSTROM, taken on
                                                                  17
                 Behalf of the Defendant.
                    August 18, 2015
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              Reported by Sandra McGraw, CCR, CSR
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                 MCGRAW REPORTING, L.L.C.
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           UNITED STATES DISTRICT COURT FOR THE
                                                                                          APPEARANCES
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             EASTERN DISTRICT OF MISSOURI
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                                                                          For Plaintiff: American Civil Liberties Union
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                                                                    3
                                                                                        Foundation
      MISSOURI STATE CONFERENCE OF )
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      THE NATIONAL ASSOCIATION FOR )
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                                                                                       2700 International Tower
      THE ADVANCEMENT OF COLORED )
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                                                                                       229 Peachtree Street, NE
      PEOPLE, REDDIT HUDSON,
      F. WILLIS JOHNSON and
                                                                    6
                                                                                       Atlanta, Georgia 30303
 5
      DORIS BAILEY,
                                                                    7
                                                                                       By: Mr. Laughlin McDonald
                                                                    8
                                                                                          Special Counsel and Director
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         Plaintiffs
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                                                                                           Emeritus, Voting Rights Project
 7
                       ) CASE NO. 14-2077
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      FERGUSON-FLORISSANT SCHOOL )
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                                                                                       American Civil Liberties Union
      DISTRICT and ST. LOUIS COUNTY)
                                                                   12
                                                                                       125 Broad Street, 18th Floor
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      BOARD OF ELECTIONS
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                                                                                       New York, New York 10004-2400
      COMMISSIONERS,
                              )
10
                                                                                       By: Ms. Sophia Lin Lakin
                                                                   14
         Defendants.
                                                                   15
                                                                                           SLS Post Graduate
11
12
         Deposition of RICHARD ENGSTROM, produced, sworn
                                                                   16
                                                                                           Public Interest Fellow
      and examined on the 18th day of August, 2015, between
13
                                                                  17
                                                                                          and Ms. Julie A. Ebenstein
14
      the hours of nine-thirty in the forenoon and
                                                                  18
15
      three-thirty in the afternoon of that day in the law
16
      offices of Crotzer & Ormsby, LLC, 130 South Bemiston
                                                                  19
                                                                          For Defendant: Crotzer & Ormsby
17
      Avenue, Suite 602, in the County of St. Louis, State of
                                                                  20
                                                                                       Attorneys at Law
      Missouri, before Sandra McGraw, CCR #614, in a certain
18
                                                                   21
                                                                                       130 South Bemiston Avenue, Suite 602
19
      cause now pending in the United States District Court
20
      for the Eastern District of Missouri, between MISSOURI
                                                                   22
                                                                                       St. Louis, Missouri 63105
21
      STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE
                                                                   23
                                                                                       By: Ms. Cindy Reeds Ormsby
      ADVANCEMENT OF COLORED PEOPLE, REDDIT HUDSON, F. WILLIS
22
23
      JOHNSON and DORIS BAILEY, Plaintiffs, vs.
                                                                   24
                                                                                          Ms. Angela Bullock Gabel
      FERGUSON-FLORISSANT SCHOOL DISTRICT, et al.,
24
                                                                   25
                                                                                           Mr. David Vaughn
25
      Defendants; on behalf of the Defendants.
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	Page 5		Page 7
1	RICHARD ENGSTROM,	1	If I ask a question you don't understand, just ask
2	of lawful age, being duly sworn to tell the truth, the	2	me to rephrase it. I'm not trying to trick you in any
3	whole truth, and nothing but the truth, deposes and	3	way so I want you to understand the question. But if
4	says on behalf of the Defendants, as follows:	4	you answer the question, I'll it's I'll believe
5	DIRECT EXAMINATION	5	that you understood the question; is that fair?
6	BY MS. ORMSBY:	6	A. Yes.
7	Q. Would you state your name for the record?	7	Q. Okay. And answer audibly like you just did.
8	A. Richard L. Engstrom. And surname is spelled	8	Yes, no. Don't shake your head or nod your head
9	E-N-G-S-T-R-O-M as in mother.	9	because it's difficult for the court reporter to get it
10	Q. Thank you.	10	down. Okay?
11	Dr. Engstrom can you tell us about your	11	A. Okay.
12	educational background? And let's just start from	12	Q. All right. All right. Let's get back into
13	where you graduated from high school.	13	it.
14	A. High school. Union High School in Grand	14	So you went to Hope College in Holland, Michigan?
15	Rapids, Michigan.	15	A. Correct.
16	Q. Okay. And you went to undergrad then?	16	Q. For your undergrad?
17	A. Yes, I did.	17	A. Correct.
18		18	
19	Q. Did you go to undergrad immediately following high school?	19	Q. And you got your degree in what?
	· ·	20	A. It's a liberal arts degree.
20	A. I did.	20	Q. Okay.
21	Q. And you graduated from high school when?		A. I was a political science major.
22	A. 1964.	22	Q. All right. And did you go to grad school
23	Q. Okay. And where did you go to undergrad?	23	then?
24	A. Hope College.	24	A. I did.
25	Q. Where is that at?	25	Q. Immediately following undergrad?
	Page 6		Page 8
1	A. Holland, Michigan.	1	A. Yes.
2	Q. Okay.	2	Q. When did you graduate from your undergrad
3	A. My voice will come up I think. This often	3	program?
4	happens.	4	A. 1968.
5	Q. We're right across. I can hear you fine.	5	Q. Okay. And where did you go to grad school?
6	A. And I'm a little deaf.	6	A. University of Kentucky.
7	Q. All right. Well, if you can't hear me?	7	Q. Okay. And what did you get your graduate
8	A. Whoa.	8	degree in?
9	Q. Yeah.	9	A. Political science.
10	A. I'm sorry. No more humor.	10	Q. Okay. Did you go straight for your doctorate
11	Q. I know you've been deposed hundreds of times	11	or did you get a master's first? What was the process?
12	but I'll just go over briefly the depo rules, which you	12	A. I got a master's basically on the way to the
13	could probably recite to me	13	doctorate.
14	A. Okay.	14	Q. And that was all from the University of
15	Q better then	15	Kentucky?
16	A So you heard Holland, Michigan.	16	A. Correct.
17	Q. I did hear Holland, Michigan.	17	Q. And when did you get your doctorate?
18	A. All right.	18	A. 1971.
19	Q. I did hear that.	19	Q. Okay. Do you have any other educational
20	So I'll ask my questions and if you let me finish,	20	background after you received your Ph.D.?
21	I'll let you finish your answers. At least I'll try my	20	A. I guess not formal education.
22	best but call me on it if I don't.	22	Q. Did you do a postdoc anywhere?
23	A. Okay.	23	A. No, I did not.
23	Q. I get excited sometimes so I want to ask the	24	Q. Okay. So were you employed immediately after
25	next question.	25	receiving your Ph.D.?
20	quotion	-	. coconing your rings.

	Page 9		Page 11
1	A. Yes.	1	A. I'm also a visiting fellow in the Institute
2	Q. And where were you employed?	2	for Social Science Research Institute. I'm a
3	A. The University of New Orleans.	3	visiting professor within the Political Science
4	Q. Okay. And how long were you there?	4	Department at Duke and a member of the graduate faculty
5	A. Thirty roughly thirty-five years.	5	in the Political Science Department at Duke.
6	Q. Wow. And you were a professor all that time?	6	Q. Okay. What percentage of your income comes
7	A. Yes.	7	from Duke and what percentage comes from testifying in
8	Q. And when you left the University of New	8	cases like this?
9	Orleans, in what year was that?	9	A. At this point I am retired from the University
10	A. 2005, I believe.	10	of New Orleans. And I have a pension.
11	Q. And what did you do?	11	Q. Uh-huh.
12	A. No, that wouldn't be right.	12	A. Not much would come from Duke. That depends
13	Hmm, I'm sorry.	13	on whether I would be teaching or not.
14	Q. That's all right.	14	Q. Okay.
15	A. I left after Katrina.	15	A. So the rest of my retirement would be
16	Q. And that was ten years ago.	16	supplemented by consulting work, which includes expert
17	A. When was that?	17	witness work.
18	Q. It was ten years ago.	18	Q. Okay. So what percentage is your pension and
19	A. Was that 2005?	19	what percentage is consulting work?
20	Q. It was.	20	A. I don't know.
21	A. My memory's better than I thought.	21	Q. You don't know.
22	Q. And the only reason I know that is I listen to	22	Do you have any idea how many VRA cases you've
23	NPR and they've been doing all month ten years after	23	been involved in?
24	Katrina?	24	A. VRA cases?
25	A. Okay. I left in 2005. In the fall.	25	Q. Uh-huh.
1	$\label{eq:page 10} \textbf{Q. Okay. And what did you do then?}$	1	Page 12 A. Since in my whole career?
2	A. I had I became a consultant in the Center	2	Q. Uh-huh.
3	for Civil Rights at the University of North Carolina	3	A. Well, the first one was in the early 1970s.
4	Law School.	4	Q. Okay.
5	Q. Okay. And how long did you do that?	5	A. So I've been going on for over almost forty
6	A. A year and a half, I believe.	6	years.
7	Q. Okay. So that takes us to the middle of 2006	7	Q. Okay.
8	approximately? Or 2007?	8	A. That's about right. And I don't know what the
9	A. Well, I believe in January 2007, I believe,	9	number would be.
10	is I moved to The Center for the Study of Race,	10	Q. Okay. Do you have any idea how many cases
11	Ethnicity, and Gender in the Social Sciences at Duke	11	you've either testified in or provided expert reports
12	University.	12	for the ACLU or the NAACP?
13	Q. And is that where you are now?	13	A. I don't think any for the NAACP.
14	A. Yes.	14	Q. Okay.
15	Q. Okay. Are you employed by Duke as a faculty	15	A. Now but I have worked for the NAACP Legal
16 17	member?	16 17	Defense Fund.
18	A. No. I have visiting status.Q. Okay.	17	Q. Okay.A. If that's what you're referring to.
19	A. I'm a research associate in The Center for the	19	Q. Sure.
20	Study of Race, Ethnicity, and Gender in the Social	20	A. Okay.
21	Sciences. If I refer to that again, I'll just say	21	Q. That's fine.
22	REGSS.	22	A. I don't know the number.
23	Q. REGSS?	23	Q. Is it more than ten?
ı			A. I would think it would be probably approaching
24	A. R-E-G-S-S.	24	A. I Would trillik it would be probably approaching
24 25	A. R-E-G-S-S. Q. Okay.	25	ten but I'm not sure.

	Page 13		Page 15
1	Q. Okay.	1	you working on behalf of the ACLU?
2	A. As for the ACLU, I believe they did the	2	A. Only this one.
3	Washington State of Washington Chapter of the	3	Q. Okay. And are any of those on behalf of the
4	NAACP no, I'm sorry, of the ACLU.	4	NAACP Legal Defense Fund?
5	Q. Uh-huh. Right.	5	A. Terrebonne Parish is and Fayette County,
6	A. I think they sponsored the case in Yakima,	6	Georgia is.
7	Washington, a few years ago.	7	Q. And have you ever previously worked on a VRA
8	Q. Okay.	8	case in Missouri?
9	A. I don't recall a previous case for the ACLU.	9	A. I don't recall one.
10	Q. Okay.	10	Q. Okay. And have you worked specifically with
11	A. Again, I could be wrong but.	11	the Plaintiffs' attorneys in any other cases?
12	Q. Yeah.	12	A. I have been involved in oh, that may be
13	A. Nothing comes to mind at the moment.	13	another ACLU case. I was involved in a case in was
14	Q. I won't hold you to it. Just trying to get an	14	a Native American case in South Dakota. It will come
15	estimate.	15	to me. I think it was something versus City of Martin.
16	A. Okay.	16	Q. Okay.
17	Q. How many VRA cases are you currently involved	17	A. But I know Laughlin was involved in that case.
18	in?	18	And I believe I had I have previously done some work
19	A. I'm going to have to write. Let's see.	19	on for the ACLU that I have not remembered earlier.
20	I think if I had more glove. I'm not sure of this	20	Let's see. There would have been some but I'm not
21	as it goes.	21	remembering them
22	-	22	•
23	Q. Okay.	23	Q. Okay.
	A. But these are the ones that I'm working on or	1	A right now.
24 25	will be soon.	24	Q. Would you say it's less than five that you've
25	Q. Okay.	25	worked with these specific attorneys?
	Page 14		Page 16
1	A. That would be this one, the case in Fayette	1	A. Well, it's the first time I've ever worked
2	County, Georgia.	2	with these two ladies.
3	Q. Okay.	3	Q. Okay.
4	A. Case in San Juan, Utah. A case in Terrebonne	4	A. Only Laughlin
5	Parish, Louisiana. As of now no work is being done but	5	Q. Okay.
6	the Texas redistricting case statewide is under	6	A would come under that category.
7	decision, and it seems like that case gets remanded. I	7	Q. Okay.
8	mean, it's been a long time and I've been to a couple	8	A. I think maybe five cases, or four. I mean,
9	trials already with it.	9	it's
10	Q. Okay.	10	Q. All right. And who initially contacted you
11	A. I just thought of one, although I have done	11	regarding this case?
12	almost no work, but Pasadena, Texas.	12	A. I believe it was Dale Ho.
13	Q. Okay.	13	Q. And when was that?
14	A. That's a new one. I may be missing one or	14	A. I don't recall. Sometime I would think within
15	two.	15	the last year, year and a half maybe.
16	Q. All right. So I'm counting six including this	16	Q. And do you know when you were specifically
17	case? Is that what you count?	17	retained for this case?
18	A. Well, five including this including this	18	A. No.
19	case. I don't know if I'm working on the Texas	19	Q. Okay. And what's your hourly rate?
20	redistricting anymore. Who knows.	20	A. Four hundred dollars an hour.
21	Q. Okay.	21	Q. And you submitted invoices to the ACLU for
22	A. That's like a rubber ball. It seems they're	22	this case?
23	always back in court. But, no, I'm doing no work on	23	A. No, I haven't billed anything for this case
24	that case at this point in time.	24	yet.
25	Q. All right. And how many of those cases are	25	Q. Okay. Do you have any idea how many hours so
	,	"	.,

Page 17 Page 19 be in this case? 1 far you've worked on this case? 1 2 A. Have not tabulated it. 2 A. To provide a report and now testimony in 3 Q. Is it more than a hundred? 3 racially polarized voting in elections for the A. I don't think so. 4 Ferguson-Florissant School District. 4 5 Q. Is it more than fifty? 5 Q. Can you tell me generally what is the Voters 6 A. I don't think so. 6 Rights Act -- Voting Rights Act? Q. Twenty-five? 7 A. What is the Voting Rights Act? 7 8 A. After the end of this trip maybe. 8 Q. Uh-huh. Q. Okay. I'll put twenty-five to fifty. 9 9 A. It's a right adopted in 1965 by the federal A. I didn't say that. 10 10 government. Has been renewed a number of times with 11 MS. EBENSTEIN: We won't hold you to it. 11 special provisions; although, recently the Supreme Q. (By Ms. Ormsby) We won't. We won't. Believe 12 12 Court has basically eliminated the work to be done 13 me. They won't either. 13 under Section 5 of the Voting Rights Act. But Section 14 Has anyone assisted you in any manner in this 14 2 is still alive. There are other provisions 15 case? 15 concerning language, minorities, and language 16 A. The data files and precinct demographics that 16 assistance with elections and things of that nature. I relied on in this case were provided to me by William 17 17 Q. Okay. And in your initial expert report, 18 18 which I'll enter as exhibits now. Cooper. 19 Q. And what did you do to prepare for today's 19 MS. GABEL: These are already entered. 20 deposition? (Defendant's Exhibits H and I were marked for 20 21 A. Yesterday I read my report, my initial report; 21 identification.) 22 my rebuttal report; and Professor Rodden's response to 22 Q. (By Ms. Ormsby) These are the two reports me. I believe he calls it a supplemental report. that you authored for this case; is that right? 23 23 Q. Did you read any --24 24 A. Certainly looks like my reports. A. -- And I spent an hour, hour and a half with 25 25 Q. Okay. Page 18 Page 20 the attorneys last night. 1 A. They certainly look like my reports. I'm 1 2 2 Q. Okay. Did you read any other expert reports sorry 3 filed in this case? 3 Q. And in your initial expert report you conclude 4 A. No. 4 that -- at least five elections for school board in the Ferguson-Florissant School District. And in at least 5 Q. And have you spoken to Mr. Cooper? 5 A. I suspect I called him once about the data 6 five of them there's been racially polarized voting; is 6 7 files to find out how he created them. that right? 7 8 Q. Uh-huh. 8 A. That's correct. 9 9 A That would be it I believe Q. Can you define cohesiveness as it related to 10 10 the VRA? Q. And have you talked to --11 A. -- And I spoke to Bill Cooper on another 11 A. Cohesiveness refers to -- this would be Prong 12 issue, not on this case. 12 2 of the Voting Rights Act and that concerns whether 13 Q. Sure. 13 the minority is politically cohesive and in effect 14 A. But about a week ago maybe. But we did not 14 whether there's a tendency to support the same discuss this case. candidates 15 15 16 Q. And have you talked to either Professor 16 Q. So any tendency at all? I mean, do you have a cutoff on where you decide what is a tendency and what 17 Kimball or Professor Gordon? 17 18 A Professor Kimball? 18 is not? A. Well, I don't have a cutoff. And whether 19 Q. I guess that's a no. 19 20 A. Well, if you gave me a -- well, it would be 20 there's a tendency or not is not election specific. no. I don't know who you're referring to specifically. 21 O. Uh-huh. 21 22 Q. Okay. 22 A. You would be looking across the elections. 23 A. And Professor Gordon, I did not talk to that 23 Q. So if you could turn to page 18 of your initial report. And I'm looking at the 2013 election. 24 person either. 24 25 Q. Okay. And what do you understand your role to 25 And Mr. Henson you stated was a preferred minority

Page 21 Page 23 candidate, correct? 1 A. That's correct 1 2 A. Yes, he was the first preference of minority 2 Q. And Ms. Hogshead has twice the support as 3 3 Mr. Thomas, correct? 4 A. Correct. 4 Q. With about a little over forty percent of votes among African Americans, correct? 5 Q. But -- and it's not because the competence 5 6 A. The point estimate is forty-three point seven 6 intervals overlap between Hogshead and Brown? It's 7 just that you decided that there was lack of 7 percent. 8 cohesiveness in some way of the African Americans to 8 Q. Okay. But you don't -- do not conclude -- I'm determine a second preferred candidate despite the trying to figure out your reasoning here. Because of 9 10 the point overlap between Hogshead and Brown, you don't 10 fact? declare either of them and because -- and they're well 11 A. Well, I would say that I would list Hogshead 11 as the second choice candidate of African-American 12 ahead of the second African-American candidate of 12 Thomas. Is that why you don't declare either Hogshead 13 voters. But that doesn't mean that she -- I believe 13 it's a she? or Brown for the second preferred candidate for African 14 14 15 Q. Uh-huh. 15 Americans because of the way that the point overlap -competence interval overlaps? 16 A. Was a preferred candidate for African-American 16 17 voters because that person was Henson. And Henson was 17 A. I would have to review the narrative on that 18 defeated in this election. 18 election. And you did say well ahead, I believe? 19 Q. Well --19 Q. So --20 A. So my interest is they've shown a clear 20 A. I will agree they're ahead. 21 preference for an African-American candidate. Q. Okay. 21 22 Q. Yes. 22 A. That's an adjective that you used, not me. 23 A. That African-American candidate lost because 23 Q. Okay. So Ms. Hogshead, just to be clear, has 24 that preference wasn't shared by non-African-American 24 twenty-four point two percent of the African-American 25 voters. So I'm not interested in what remained, I'm 25 votes, Mr. Brown has twenty point two percent of the Page 22 Page 24 African-American vote and Mr. Thomas has eleven point interested in can they elect a candidate they prefer. 1 1 2 nine percent of the African-American vote. 2 This is an election in which they could not. Or did 3 So I'm just trying to understand why you didn't 3 4 declare either Hogshead or Brown the second preferred 4 Q. Well, unless Ms. Hogshead was a preferred 5 candidate of African Americans when they were more than 5 candidate of choice. Can't they have two preferred 6 one or more than ten points? 6 candidates of choice for two open seats? 7 A. Well, obviously it's a two-seat election so A. When they were what? Oh 8 Q. Due to the difference. I'm just trying to 8 there are two candidates that would win -- I mean, if 9 figure out why one of them was not declared the 9 you only counted the black vote, one would be Hogshead. 10 minority-preferred candidate. 10 But I have testified for years, and I believe the A. Because when we go to Prong 3, it's -- let me courts have agreed, when there's a large difference 11 11 12 see. Mr. Henson was the choice of the African-American 12 between the voting support between the favored 13 voters. Clearly the first choice. 13 candidate who's African American and lesser preferred 14 candidates who are white, that you don't count them as 14 Q. Okay. 15 15 a preferred representative. A. And he was defeated. 16 The other, Hogshead and Brown, come in second and 16 I cite a case that does that. It was one of my 17 cases a long time ago, which is Collins v. City of 17 a close third from each other. But I would not 18 Norfolk. 18 consider Hogshead to be an African-American 19 Q. Do you ever name a white candidate as a 19 candidate -- a candidate of choice among African 20 minority-preferred candidate? 20 Americans in terms of winning because their most 21 preferred candidate Henson lost 21 A. Sure. 22 Q. When have you named a white candidate? 22 Q. But we agree there were two seats up for 23 23 election? A. Most recently I believe it was in the school A. There was. 24 board case involving the city's -- the Euclid City 24 School Board in the State of Ohio. 25 Q. Two candidates elected, correct? 25

Page 25 Page 27 Q. Okay. 1 candidates over those elections, correct? 1 2 A. And this concerned the election held under a 2 A. Correct. 3 remedy called limited voting. The white -- they were 3 Q. And of those minority-preferred candidates, for three seats. The white candidate, or one of the 4 only two of the eight or one-quarter were victorious, 4 white candidates, excuse me. I don't remember exactly 5 right? 5 6 how many, was by far the leading candidate of choice of 6 A. That would be correct. 7 Q. Do you believe that the most recent elections 7 African-American voters over a majority of their votes. 8 8 And he was the person I said was their choice. are the most probative? 9 9 Q. When you determine minority-preferred A. Unless there are special circumstances candidates, do you take into account the candidate's 10 10 involved in those elections, yes. 11 race? 11 Q. And you stand by your finding that minority-A. Well, I would say yes, we take into account 12 preferred candidates were victorious, however, in the 12 13 the candidate's race 'cause biracial elections are 13 most recent two elections? 14 considered the most probative. Biracial elections A That is correct 14 15 Q. And just to be clear, from 2011 to the present 15 wouldn't be considered the most probative if race 16 didn't matter under the law. So race matters. 16 there were twelve total seats contested and you only 17 And what I want to know when I do this is, when it 17 identified eight minority-preferred candidates for 18 comes to politically cohesive, is that cohesive choice 18 those seats? 19 of theirs to be represented by people from within their 19 A. Eight of the twelve, yes. 20 Q. So for four of those seats did you decide that 20 own group. 21 Lesser candidates from another group -- this is a 21 minority voting behavior was insufficiently cohesive to 22 situation where the vote for Henson is way above the 22 identify a minority-preferred candidate? 23 others, and then if they're going to use their second 23 A. In the other four. Yes. 24 vote, they have to do it. 24 Q. So you first examine whether African Americans 25 Now, Thomas looks to be a pretty minor candidate. 25 voted cohesively, throw out the seats where they didn't Page 26 Page 28 Didn't even get an estimated twelve percent from either 1 vote cohesively, and then ask whether minority-1 2 group. Which meant are you going to choose Hogshead or 2 preferred candidates were victorious in those 3 are you going to choose Brown. 3 situations where African Americans were cohesive? 4 But the bottom line is I would not -- my concern 4 A. I didn't throw out anything. You said I threw 5 5 is with Henson 'cause the black community in this out the ones where they weren't cohesive? 6 school district has consistently preferred 6 Q. The four seats that you didn't name a 7 African-American candidates across all five of these 7 preferred candidate for, did you not consider minority-8 elections. 8 preferred candidates for those because minorities had 9 So if they're going to be able to elect a 9 not voted cohesively? 10 candidate or a representative of their choice, I 10 A. Well, I wouldn't say I didn't consider them. believe Section 2 says representative, then I have to But it is the case that Thomas, as not the second 11 11 12 pay particular attention as to whether they are able to preferred candidate -- this is in 2013. Wallace and 12 13 elect representatives from within their own group. 13 Thomas are not -- again are not -- well, none of 14 Q. So your expert report identifies two 14 them -- the three -- there are three that are in the 15 minority-preferred candidates in 2011, correct? 15 top three and over twenty some percent. And Wallace 16 A. Yes. 16 and Thomas are below that. Again both groups. 17 Q. One in 2012? 17 Let's see, in 2015, yes, I don't think Hines and 18 A. Yes. 18 Person, I don't consider them candidates of choice. 19 Q. One in 2013? 19 It's only two votes -- two seats, excuse me, and 20 A. Correct. 20 they wouldn't even -- they would not have won either 21 Q. Three in 2014? 21 one if they -- if we only counted the African-American 22 22 Q. And one in 2015? 23 23 Q. So is it your broad conclusion that African 24 A. Correct. 24 Americans do not have the opportunity to elect 25 Q. For a total of eight minority-preferred 25 candidates of choice in the Ferguson-Florissant School

Page 29 Page 31 District? 1 Q. And just for the record, what is HP analysis? 1 2 A. I would say that -- that the first three 2 A. Homogeneous precinct. 3 elections indicate that they didn't. The fourth 3 Q. Okay. I knew that. I just -- I don't want 4 election, they did. That was the first time it 4 you to think I didn't know that. I just want the 5 happened. And then the fifth election is a 5 record to be clear. 6 postlitigation election with unusual circumstances tied 6 So you indicate in that footnote that there are 7 to it, so I would be very cautious about inferring much 7 few precincts in the district that meet the threshold 8 probative value from that election. 8 of being homogeneous; is that right? Q. And we'll talk about that in more detail in a 9 9 A. There are a few precincts? 10 minute. 10 Q. There are very few precincts. 11 Do you define a minor candidate to be someone who 11 A. If you relied on ninety and ten percent, there receives less than twenty percent of the vote? 12 12 wouldn't be many. I think especially -- well, the 13 A. I don't know that there is a particular cutoff 13 numbers are there. 14 in the competitive situation in these elections. 14 O. Uh-huh. Certainly when a candidate, say, gets less than ten 15 15 A. And I don't think I would say that -- yeah, 16 percent from both groups, I would say that it's 16 there are only a few. It increases when you go to 17 reasonable to say that they're minor candidates. 17 eighty-five or fifteen. Q. Okay. Do you believe that homogeneous 18 18 Q. So is lowering the generally accepted precinct analysis is as reliable as King's method? 19 19 standard -- is that general practice, to lower the 20 A. No. generally accepted standard in order to create 20 21 Q. And which analysis is generally more accepted 21 homogeneous precincts? 22 in your field? 22 A. I have seen that done, yes. 23 A. I would say King's method. 23 Q. Do you do that often? 24 Q. And what do you do when King's method and 24 A. I don't use homogeneous precincts anymore. 25 homogeneous precinct analysis conflict? 25 Q. Okay. And doesn't the fact that you have to Page 30 Page 32 1 A. I would look at the basis for the homogeneous 1 lower the generally accepted standards to create 2 2 precinct analysis and it may be obvious that it's an homogeneous precincts mean that the district is 3 inadequate sample of the precincts. 3 racially dispersed? 4 Q. Uh-huh. 4 A. Well, no, not when you're dealing with ninety 5 5 A. And that's something -- I mean, I would -and eighty-five percent. I mean, sure, there's some 6 other things being equal, I would prefer to accept 6 dispersion. 7 King's method than homogeneous precinct. 7 Q. Uh-huh. 8 Q. But you in your report, you showed that they 8 A. But the district could be, you know, still 9 conflicted, right? I mean, you provided a segment on 9 racially segregated over to, you know, to some -- to a 10 both? 10 large degree. That's possible. These numbers don't 11 preclude that. 11 I didn't show that they conflicted. Q. But you gave a -- you talked about homogeneous 12 12 Q. Okay. Let's look at the 2011 election. I'm 13 precinct analysis a little bit in your initial report? 13 going to be looking on page 17. In your rebuttal report -- in your rebuttal report you state that 2011 14 A. Just a brief paragraph and I provide a table 14 15 is a better example of a three-seat election than 2015. 15 of the results. I don't report any of those numbers in 16 16 Is that right? 17 Q. Right. Could you turn to page 13 of your 17 A. I don't know if I say that. I do say that 2015 is a postlitigation election with special 18 initial report and I'm looking at the Footnote No. 9. 18 19 19 And it says: HP analyses are typically based on 20 cutoffs of ninety percent and ten percent, but in this 20 Q. And if the two African-American candidates in application eighty-five percent and fifteen percent are 21 2011, Dr. Graham and Ms. Hawkins, would have won, you 21 would have concluded that there were two minority-22 employed due to the small number of precincts that 22 23 satisfy the ninety percent/ten percent thresholds. Did 23 preferred candidates, right? If they both would have 24 I read that correctly? 24 25 A. Yes, you did. 25 A. Oh, and both would have won?

Page 33 Page 35 Q. Uh-huh. 1 the outcome could have been different. 1 2 A. Yes. 2 Q. So are you claiming though that these 3 Q. And that would have been a clean sweep for the African-American candidates didn't win because of block 3 voting of whites? 4 minority-preferred candidates? 4 5 A. Well, it would have been both African-American 5 A. Well, whites certainly vetoed their choice. 6 candidates winning. I would say if there was a clean 6 Q. By block? sweep, it would probably have to involve a third. A. If we only counted the African-American vote, 7 7 8 8 Graham and Hawkins would win. Q. Okav. 9 A. 'Cause three seats are at issue. 9 Q. Okay. 10 Q. Okay. But there were only two African 10 A. All right. Along with Clark. Americans running in this election; is that right? Q. So what technique do you --11 11 12 A. Correct. 12 A. So --13 Q. Would it surprise you to know that the third 13 Q. I'm sorry. 14 ranked candidate in overall votes, Mr. Chabot, he 14 A. So they would have won if we only counted 15 African-American votes; therefore, it's the white vote 15 received three thousand eighty votes, and Ms. Hawkins 16 received two thousand eight hundred and ninety votes, 16 that resulted in them not winning 17 and Dr. Graham received two thousand seven hundred and 17 Q. So -- so that's the technique that you use to 18 ninety-five votes? So by my calculations, Hawkins fell conclude that a lack of white support was a larger 18 19 short of Mr. Chabot's total by only a hundred and 19 factor in her loss, or that of Dr. Graham, than lack of 20 ninety votes and Dr. Graham fell short by two hundred 20 support among African Americans? 21 and eighty-five votes. A. Well, that's Prong 3. You know, that's a 21 So according to your ecological inference 22 22 Prong 3 of Gingles that tells you to look at what the analysis, what percent of the total votes cast by 23 majority group -- how they voted and whether they 23 African Americans went to Ms. Hawkins and Dr. Graham? defeated -- usually defeat the choice of the 24 24 25 A. Forty-five point six percent. 25 African-American voters. They did here and they did in Page 34 Page 36 1 Q. And you estimate that the most votes cast by 1 subsequent elections as well. 2 African Americans, that therefore, fifty-four point 2 Q. But you agree that the two African Americans 3 four percent of the votes cast by African Americans 3 who lost by slim margins and attracted less than half 4 went to white candidates in 2011, correct? 4 of the African-American votes, that they lost because 5 A. Yes. There were seven white candidates also 5 the whites thwarted their election; is that your in the field and they had three votes. So if they used 6 testimony? 6 7 their full franchise, they would have to vote for at 7 A. Well, my testimony would be that they lost 8 least one white. 8 because the white voters didn't vote for them. Now, if 9 9 the voting behavior had been different, then things Q. Okay. If Ms. Hawkins had received twenty-one 10 would have been different. But I have to deal with 10 point -- no, if Ms. Hawkins received only twenty-one what really happened. I don't deal with what if 11 point five percent of the African-American votes and 11 12 she fell short of victory by a hundred and ninety out 12 questions when I analyze elections. 13 of the twenty-three thousand votes cast, couldn't she 13 Q. I know you said that you didn't even know who 14 have achieved victory if only she'd attracted a 14 Dr. Kimball is and you hadn't read his -- Dr. Kimball's 15 report. It's already been entered. Exhibit F. 15 slightly larger share of the African-American vote? 16 A. Oh, she may have achieved victory by receiving 16 This is the rebuttal report submitted by 17 a slightly larger share of African-American votes. She 17 Dr. Kimball. And Dr. Kimball makes an effort to 18 could have received -- she could have achieved victory ascertain the vote shares of various candidates among 18 19 by getting more non-African-American crossover. She --19 African Americans and whites. I'll let you look at it. 20 I don't know how many, let's see. 20 A. It is a rebuttal report? 21 Chabot, seven point one. And if more African 21 Q. It is a rebuttal report, yes. 22 Americans had withheld votes, doesn't look like that, I 22 A. A rebuttal to me? 23 mean, that that's going to be much impact on Chabot and 23 Q. No, no, no. 24 that it didn't have much support for that person 24 A. Oh. okav. 25 anyway. But, sure, if the election had been different, 25 Q. It's just a rebuttal report that he submitted,

Page 37 Page 39 not to you. 1 MS. EBENSTEIN: Yeah. Well, I'd prefer you 1 2 A. Okay. 2 read the entire report and that describes why he's 3 Q. Yeah, he's a Plaintiffs' expert. 3 doing it in comparison to Dr. Rodden's report. A. Oh, okay. 4 A. The entire document? 4 MS. EBENSTEIN: Right here. I'd prefer you 5 Q. He's one of your guys. 5 6 A. I really didn't know. Okay. 6 read the entire document or just don't ask questions 7 Okay. I have not seen this. 7 about it. But, yeah, can you take -- we can go off the 8 8 Q. All right. So if you could just look through record but if you want to take a second to read the 9 9 his report, he -- he makes an effort to ascertain the whole thing if you want to answer questions about it. 10 vote shares of various candidates among African 10 MS. ORMSBY: Sure. We'll go off the record. 11 Americans and whites. And he relies exclusively on 11 (Short break.) 12 homogeneous precinct analysis. 12 Q. (By Ms. Ormsby) So you've read the entire 13 MS. EBENSTEIN: I'm sorry, Cindy, he's 13 report, correct? A. Yes. 14 14 testified that he's never seen this report. Q. And --15 MS. ORMSBY: I know. 15 MS. EBENSTEIN: And doesn't know who 16 A. Quickly but yes. 16 17 Q. We agree that Dr. Kimball used homogeneous 17 Dr. Kimball is. We're going to have to give him time 18 to review it if you're going to ask him questions. 18 precinct analysis? 19 MS. ORMSBY: I know. I know. 19 A. We do. 20 MS. EBENSTEIN: So this isn't a question about 20 Q. Okay. And you've testified that you don't 21 21 believe that that's the best method to use already? his report? 22 MS. ORMSBY: No. It will be. I just was 22 A. I have testified that EI is preferable. giving a statement and I'm letting him look at it. 23 Q. Okay. So if we could just then turn to Table 23 24 24 2 on page 5. A. There's no question on the table? 25 Q. (By Ms. Ormsby) No, no. 25 A. I'm there. Page 38 Page 40 1 A. Okay. All right. Oh, this is mine to look it 1 Q. Okay. Table 2 on page 5. And look at the 2 over? 2 entry for 2011. And according to Dr. Kimball, what's 3 3 the share of ballots cast in overwhelmingly African-Q. Yeah. 4 A. All right. Okay. 4 American precincts for Dr. Graham? 5 MS. EBENSTEIN: Sorry. Before you answer, 5 A. Fifty-two percent. 6 there are places in this report that Dr. Kimball refers 6 Q. Okay. And I understand that Dr. Kimball 7 to or reports Dr. Rodden's numbers, so if I could ask 7 didn't do the same thing as you did. He seems to be 8 that you read the entire report before you answer 8 dividing -- and correct me if I'm wrong on this. He's 9 9 questions on it. dividing the votes received in these specific precincts 10 MS. ORMSBY: I'm not going to ask questions by the total number of ballots cast in those precincts; 10 about specific numbers, I just want to refer to the 11 11 is that right? 12 chart, the chart that Dr. Kimball does on page 4. If 12 A. Well, it says share of ballots cast for top 13 that helps you. 13 choice 14 MS. EBENSTEIN: There's no chart. 14 Q. So for --15 MS. ORMSBY: The chart on page --A. -- So, but, I mean, it -- also in the 15 16 A. Five. 16 paragraph below --MS. ORMSBY: Five, sorry. 17 17 Q. Uh-huh. 18 MS. ORMSBY: Are you okay? 18 A. -- he talks about percent of voters. So it's 19 MS. EBENSTEIN: Sure. I just wanted to read 19 not clear whether he's talking about percent of votes 20 the description on page 4. 20 or percent of voters. 21 MS. ORMSBY: I was waiting for your okay. 21 Q. Okay. When you did your HP analysis in your 22 MS. EBENSTEIN: Which describes what Table 2 22 report, you used -- you did use -- you divided the 23 is. Again, because he's never seen this report before. 23 number of votes received for each candidate by the 24 MS. ORMSBY: Sure. Absolutely. number of votes cast. That's what you did, correct? 24 25 A. This last paragraph? 25 A. I'm going to check it.

Page 41 Page 43 O. Uh-huh. seven. So I suspect he is actually looking at number 1 1 2 A. I think that's what I did. 2 of voters, not number of votes cast. 3 I believe that's what I did. It says -- I'm on 3 Q. Okay. Which is a lower number? 4 A. Correct. 4 paragraph 40, second sentence. It says: This 5 Q. Okay. And you used the higher number? Just 5 procedure simply adds up the votes received by each 6 candidate within the precincts that are deemed 6 to clarify, when you did your HP you did votes cast or 7 7 homogeneous. And so I'm assuming that they are divided 8 8 by the total number of votes. A. According to my analysis -- my analysis was in 9 effect seeing how much agreement there was between 9 Q. Your chart starts on page 20 if that helps you at all. 10 10 homogeneous precinct analysis and EI. 11 A. Okay. Yes. That is labeled Percent of 11 Q. Correct. African-American Votes, Percent of non-African-American A. The EI is a percentage of the votes cast --12 12 13 Votes. 13 Q. Right. A. -- in my tables. 14 Q. Okay. 14 15 A. So, yes. 15 Q. Okay. 16 Q. Okay. In your initial report you -- in your 16 A. So I believe that's the same thing I did with 17 EI analysis you determined that Dr. Graham received 17 HP. Judging from his language, it looks to me like he 18 twenty-four point one percent of the votes cast, 18 had the number of ballots cast as opposed to the total 19 correct? 19 votes as a denominator. But that can be -- someone A. Correct. could determine that by simply looking at the documents 20 20 21 Q. And --21 of how many voted and how many votes were cast. 22 A. -- Let me look at it. 22 Q. Okay. 23 Q. Uh-huh. It's on page 17. 23 A. But that would very likely explain any 24 discrepancy between his and mine. 24 A. Correct. 25 Q. And you -- you stated in your -- in your 25 Q. Okay. Page 42 Page 44 rebuttal to Dr. Rodden's that you accepted his numbers, 1 A. Besides, he has more homogeneous precincts 2 and I think you went ahead and used his numbers? Your 2 because his cutoff is eighty and twenty. 3 numbers were very close. Or your EI analysis. 3 Q. And yours was eighty-five fifteen? 4 A. Our EI estimates were so close that I believe 4 A. Right. And I believe -- I suspect he is 5 we could use either set. 5 dealing with percent of voters, like he says in the 6 Q. But when we look at Dr. Kimball's homogeneous 6 narrative, as opposed to percent of votes. precinct analysis, he states that out of six hundred 7 8 and eighty, and we're not sure if it's ballots or 8 A. And share of ballots, okay, that actually is 9 votes, right, based on his explanation, page 5? 9 quite consistent with what he put in. I was wrong. He 10 A. Okay. 10 says share of ballots cast for top choice. So that's not inconsistent with saying fifty-four percent of 11 Q. The six hundred and twenty-eight, you said we 11 don't really know if it's ballots cast or votes cast; 12 12 13 is that right? 13 Q. Okay. Okay. And when you say fifty-four percent, you're talking about the 2013 Henson, right? 14 A. Well, we could know if we went to documents 14 that would indicate the number of people that voted or 15 A. Yes. That's what he's talking about on the 15 16 the number of votes. 16 bottom of page 5. Q. Okay. 17 17 Q. Okay. Are you aware that Dr. Graham served on A. As I said, in the paragraph below --18 18 the Ferguson-Florissant School Board for twenty-two 19 19 years beginning in 1988? 20 A. -- he talks about fifty-four percent of 20 A. I don't know. I mean, I know some of these 21 voters. So his -- what am I? Fifty-four percent would candidates had been on the board. I don't know 21 22 be, I believe, the Henson analysis? 22 specifically about her and when her service on the 23 Q. I think you're right on that. 23 board began. 24 A. And so he says fifty-four percent of them 24 Q. Okay. And are you aware that in 2002 an 25 voted for Henson. My estimate is forty-three point 25 election that included four white candidates, two of

Page 45 Page 47 whom were popular white incumbents, that Dr. Graham 1 mentioned you shouldn't pay attention to elections with 1 2 received more votes than any other candidate? 2 special circumstances so I want to --3 A. Well, I'm not aware of that, no. I mean, I 3 A. -- No, I don't think I said that. Q. Well, you should consider special 4 might have read that in Dr. Rodden's report 'cause he 4 5 goes back to, I think, 2000. Something like that. But 5 circumstances when you look at the results. I want to 6 I don't recall it. 6 look at a two-seat election with no special 7 circumstances. Would you agree that 2013 fits that 7 Q. So thinking about racially polarized voting, 8 8 how is it that Dr. Graham was able to achieve so many 9 A. Well, special circumstances usually are 9 victories over such a long period of time? 10 focused on a winning candidate. In this instance, I 10 A. 'Cause she got more votes than other 11 mean, I can see, you know, I think we have a situation 11 candidates and came in either second or third depending 12 somewhat limited to -- somewhat similar to 2015 in 12 on the number of seats at issue. 13 Q. So based on the history of Dr. Graham being 13 that -- yeah, there's a -- in this case the second elected to the board, it's still your conclusion that 14 14 black candidate appears to be a minor candidate. Just African Americans did not have the opportunity to elect like Dameron in 2015 appears to be minor candidate. So 15 15 16 Dr. Graham in 2011? 16 that, you know, but other than that, Henson was the 17 A. Did not have the opportunity? What I can say 17 choice and did not win. 18 is they did not elect her. Is it a her? I'm sorry. 18 Q. Did you include in your report anywhere that Q. It is a her. 19 19 you believed Thomas to be a minor candidate? A. They didn't elect her and she was their 20 I don't believe so. 20 21 preference. I mean an opportunity. It wasn't -- yes, 21 Q. You testified a few minutes ago that Charles 22 I would say like the others, they didn't win the seats. 22 Henson was the only candidate of choice for African 23 Q. And that's a result of the white vote? 23 Americans? 24 A. Well, it's a result of the way the votes were 24 A. I don't think I testified to that. What do 25 cast but certainly Prong 3 is satisfied. That's a 25 you mean by candidate of choice? Page 46 Page 48 pretty low crossover. Q. A preferred candidate. An MPC, okay? 1 1 2 2 Q. And you're aware that Ferguson-Florissant A. Okay. I would describe him as the only 3 allows bullet voting? 3 preferred representative of choice. Obviously two 4 A. Yes, I am. 4 people are going to be elected. Mathematically you can 5 Q. And if a few more African Americans would have 5 look at first and second. But second is a long way 6 bullet voted for Dr. Graham or Dr. Hawkins, wouldn't 6 from first. And in my analysis and I believe 7 that have allowed them the opportunity to elect one of 7 Dr. Rodden's analysis. So I would say that Henson was 8 8 their preferred candidates? the preferred candidate and was defeated. 9 A. If a few more had bullet voted, I -- I don't 9 Q. And he was the only preferred candidate 10 know what the result of that would be. Although, I 10 according to your report? mean, bullet voting does provide an opportunity better 11 A. White candidates can be preferred to lesser 11 12 than a pure at-large election arrangement. But that 12 degrees. I don't dispute that in my estimate 13 opportunity requires the minority voters to withhold 13 Ms. Hogshead got the second largest percentage of votes. And if you only were adding up the black vote, part of their ballot. 14 14 15 that she would win a seat. 15 Q. Right. 16 A. That I don't think is a proper way to create 16 But I don't think that she satisfies Prong 3 17 because I think Henson was clearly the candidate of 17 an opportunity. It may work in some situations. Most 18 choice. And he was -- again, shows that African 18 likely when there's only one candidate to be elected.

12 (Pages 45 to 48)

Americans prefer to be represented by people from

Q. So your percentage for Mr. Henson was

Q. And Dr. Rodden's was thirty-nine percent; do

within their own group in these elections.

forty-three point seven percent, right?

A. Correct.

you remember that?

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would offer.

I mean, you know, if the ability is to elect one. The

dilution question here is not whether single -- whether a system that allows single-shot voting, how it

compares with the pure at-large, the question is how it

compares with what a single-member district arrangement

Q. Let's move to a two-seat election. And you

	Page 49		Page 51
1	A. I don't remember that. I can look it up.	1	by black people.
2	Q. Okay.	2	Q. And do you
3	A. Want me to look it up?	3	A. Excuse me. I shouldn't forty-one point
4	Q. No, that's okay.	4	four percent of the votes cast in precincts that were
5	A. Okay.	5	eighty-five percent black in VAP.
6	Q. If we look at Mr. Kimball's or Professor	6	Q. Okay.
7	Kimball's chart for Mr. Henson we've already talked	7	A. Now, there are also crossrace people in those
8	about it briefly when you were using it as an example	8	precincts. By that I mean white people or other
9	previously. He says: In the majority minority	9	members of the electorate.
10	precincts, using an eighty/twenty breakdown to	10	Q. Okay.
11	determine those precincts, Mr. Henson received	11	A. Not blacks.
12	fifty-four percent of the African-American vote in	12	Q. Right.
13	those precincts?	13	A. And so that figure is specific to the whole
14	A. No, I believe he's saying received a vote from	14	precinct, not just to the black people within it.
15	fifty-four percent of the African Americans.	15	Q. Okay. So fifteen percent of those precincts
16	Q. Okay. So Mr. Henson was the choice of	16	that you analyzed were non-African Americans; is that
17	African-American voters in those precincts a little	17	what you're saying?
18	more than half of the time; is that accurate?	18	A. Fifteen percent of the people?
19	A. I believe that's in those precincts, yes, that	19	Q. Of the voters. Voters.
20	would be accurate.	20	A. Of the voting age population, they could be
21	Q. Okay. And are you aware of what the margin of	21	anywhere from I mean, I don't recall the numbers but
22	victory was for Mr. Brown over Mr. Henson?	22	theoretically from zero to fifteen percent.
23	A. No, I don't I don't recall what that is.	23	Q. Okay.
24	Q. Actually not Mr. Brown, Mr yeah.	24	A. Now, the percent who actually voted in the
25	A. Mr. Brown?	25	election could be even higher than that.
	Page 50		Page 52
1	Q. Was it Mr. Brown or Ms. Hogshead?	1	Q. Okay.
2	Oh, Hogshead, yes. Okay. Yeah, the margin of	2	A. In terms of that were non-African Americans.
3	victory of Mr. Brown over Mr. Henson. Mr. Brown was	3	Q. Okay.
4	second place in this election, correct? Ms. Hogshead	4	A. I mean, this is VAP, voting age population.
5	was first; Mr. Brown was second.	5	Excuse me. This is VAP and so that doesn't reflect
6	A. Well, given the estimates, that would be the	6	exactly the racial composition of those who cast
7	case, yes.	7	votes.
8	Q. Okay. And would it surprise you to know that	8	Q. So you don't know whether Mr. Henson received
9	Mr. Brown had surpassed Mr. Henson by only a hundred	9	a majority of votes cast in the individual precincts,
10	and twenty-five votes?	10	correct?
11	A. Wouldn't surprise me.	11	A. In the individual homogeneous black precincts,
12	Q. Okay. And would it surprise you to know that	12	I would have to go look at precinct level data. My
13	there were eight thousand valid votes cast in 2013?	13	chart doesn't reflect whether it is or is not the case.
14	A. Doesn't surprise me.	14	Q. Okay. So I'm going to let you answer the same
15	Q. So according to Dr. Kimball, if Mr. Henson is	15	way but I'm going to ask the question again. You argue
16	a minority-preferred candidate, that means he won large	16	that African Americans did not have the opportunity to
17	majorities in overwhelmingly African-American	17	elect their preferred candidate of choice, Mr. Henson,
18	precincts, right?	18	even though he lost by only a hundred and twenty-five
19	A. Means he won large majorities in over well,	19	votes, and only received, Dr. Rodden's number,
20	according to Dr. Kimball he got fifty-four percent of	20	thirty-nine percent, which you accepted of the total
21	the African Americans voting voted for him.	21	votes cast by African Americans?
22	Q. Okay. In your report on page 21 in your HP	22	A. Well, I believe my conclusion about the
23	analysis, what share do you determine that Mr. Henson	23	opportunity to elect is a conclusion based on all five
24	received in overwhelmingly black precincts?	24	elections, not a single election. So when I say the
25	Forty-one point four percent of the votes cast	25	opportunity I think my text says he lost. I think

Page 53 Page 55 when I talk about the opportunity to elect, it's based Q. Okay. So is it your view we should cut off 1 1 2 on the entire set of five districts, excuse me, five 2 and not consider elections that are prior to the 3 3 special election -- special circumstance election? A. That we should cut it off before 2015? And then I think there was more to your question. 4 4 5 Q. I think you answered it. 5 Q. Yeah, should we cut off --6 But you don't deny that Mr. Henson could have won 6 A. As I said, I think you have to exercise 7 if he received a hundred and twenty-five more votes 7 caution in using 2015. It was quite different than 8 from African Americans that did -- African Americans 8 previous elections. And it was, I believe -- well, it that did not support him, correct? 9 was -- there are lots of differences between 2015 and 9 MS. EBENSTEIN: Object to the extent it calls 10 10 the previous two-seat elections. That creates for speculation about what could have happened if 11 possibilities of manipulating the candidate pool. So I 11 things happened differently. would -- I would not give it equal value to the other 12 12 13 MS. ORMSBY: Sure. 13 four. I didn't ignore it. 14 Q. (By Ms. Ormsby) Go ahead. 14 And I think it may be better to -- it might be 15 A. If he had one hundred and twenty-five more 15 better to look at the first four and then as comparable votes from any source -- and that didn't apply to 16 in that sense; although, some were three, some were 16 the -- to -- I think you were talking about Hogshead? 17 two, and they are different elections. 17 18 You gave me a number of the margin of --18 Q. Uh-huh. 19 Q. Uh-huh. 19 A. But -- where was I? Sorry. 20 Q. I think you answered the question. And I'm A. -- by which Ms. Hogshead or Brown? 20 21 Q. No, Mr. Brown. 21 going to talk specifically about 2015 in just a minute 22 A. Okay. But -- and it was -- now, you just told 22 but I want to talk about 2014 first. 23 me one hundred and what? 23 A. Okay. 24 Q. One hundred and twenty-five votes. 24 Q. If you want to turn to your chart, can you 25 A. Okay. 25 tell me how many African-American candidates were Page 54 Page 56 1 Q. Mr. Brown who took second place had a hundred 1 running? 2 and twenty-five more votes than Mr. Henson who took 2 A. Five. 3 3 Q. And how many white candidates were running? A. Three. 4 A. Okay. So my answer would be the same. A 4 5 hundred and twenty-six votes? 5 Q. And how many minority-preferred candidates did 6 Q. Uh-huh. 6 you identify? A. Or twenty-five votes more were cast for Henson 7 A. Well, it's a three-vote election and I believe 8 than were not cast for Brown, regardless of the source, 8 the top three in terms of votes got somewhere above 9 Henson would have won a seat. The source could have 9 seventy percent of the votes cast by blacks. I would 10 been black voters; the source could have come from 10 say that that shows a preference for all of the top three African-American candidates among the 11 white voters. 11 12 Q. And are you aware that Mr. Henson served on 12 African-American voters. 13 the Ferguson-Florissant School Board for seven years? 13 Q. Okay. And the top minority-preferred 14 A. I'm aware that he had served on the board 14 candidate won: is that correct? A. Correct. before. I don't know the length of time. 15 15 16 Q. Okay. And are you aware that he had been 16 Q. But then you classify Savala and Johnson as 17 actually president of the school board during that 17 losing candidates of choice, correct? 18 A. Correct. 18 seven years? 19 A. I don't recall it. I don't know if I read 19 Q. Do you know how many votes Mr. Savala fell 20 that or not. 20 short of winning the election? 21 Q. Okay. All right. So continuing through the A. No, I don't. 21 22 present, you believe that the most recent elections are 22 Q. Would you be surprised to know that he trailed 23 most probative as long as there's not special 23 the third place finisher, Mr. Morris, by ninety-one 24 circumstances involved; would that be a fair statement? 24 votes? 25 A. I think that's a fair statement. 25 A. No.

Page 57 Page 59 Q. Okay. And according to your EI analysis of Q. Okay. 1 1 2 your report, who was the fourth place finisher among 2 A. So as I see it here, it's roughly thirteen 3 **African Americans?** 3 percent of the African Americans voted for the other A. Wallace. 4 4 two black candidates. None of them are close to the Q. And what vote share did he receive? 5 three that were the top among African-American voters. 5 6 A. Eight point six. 6 So, I mean, what you're saying is, sure, if You're asking about the African-American vote? 7 7 they -- perhaps if they had spread that thirteen around 8 Q. Yes. 8 to the -- to -- given them to Savala and Johnson, 9 A. Eight point six percent of the votes cast by 9 perhaps, I haven't seen the numbers, that they could 10 African Americans. 10 have won. But, you know, that's a what if and we're 11 Q. And Mr. Wallace is African American; is that 11 dealing with reality here, you know. riaht? 12 12 If you could have won if the election was --13 A. That's my understanding. 13 people behaved differently, then okay, you could have 14 Q. Okay. So is it fair to say that although the 14 won if that happened. Just like I say. It could have three candidates of choice could be identified for 15 15 happened if more white voters crossed over to vote for 16 three seats, votes of African Americans were 16 these other two, the second and third place black 17 inefficiently split among the other three -- the other 17 candidates. 18 candidates, African-American candidates? 18 Q. Could they have won if the African Americans 19 A. Let's see. The other candidates got about 19 had voted more cohesively? A. Well, as I said, there's only thirteen percent 20 thirteen percent of the black vote. Is that the way 20 21 you maximize your vote, no. But maximization isn't 21 not going to those candidates. And then very small 22 required for racially polarized voting. As I say, if 22 percentages going to the three white candidates. I --23 he got ninety-one more votes, is that it? 23 I mean, it's always the case if more votes had been 24 Q. He needed ninety-one. 24 cast for, say, the top three candidates, they'd have a 25 25 better chance of winning. Just like, as I say, if the A. He needed ninety-two -- ninety-one? Page 58 Page 60 1 Q. Uh-huh. 1 crossover vote for those two black candidates weren't 2 2 A. Okay. And this is Savala? so minimal, then they might have won as well. 3 Q. It is. 3 Q. So let me be more specific. If the 4 A. Right. And he got seven percent of the 4 African-American voters had voted more cohesively for 5 non-African-American vote. Johnson got two point eight 5 the top three candidates, Paulette Thurman, Savala, and 6 percent of the African-American vote. There certainly 6 Johnson, wouldn't they have elected all three black 7 are a sort -- a lot of room for growth among the 7 8 non-African-American voters support for the 8 A. Well, you're saying including more votes for 9 African-American candidate. 9 Paulette Thurman. So if the votes were cast for Savala 10 Q. Do you agree that the African-American 10 and Johnson and that resulted in the three candidates candidates collectively received more votes than the 11 11 coming in first, second, and third in the total vote, 12 white candidates collectively? 12 then yes. It's a tautology. I mean, you're setting 13 A. I don't recall. I don't remember. 13 up -- you're talking about a hypothetical, and if it 14 Q. If that is the case, if African-American 14 had happened, I'd have to look at the numbers because I 15 candidates collectively received more votes than the don't know how far back Johnson was looking at this 15 16 white candidates, how is it that only one 16 17 African-American candidate won? 17 But as I said, if it would have been different, it 18 A. Because only one African American came in the 18 would -- it could have been different. But this is 19 top three in the total vote. 19 what really happened. I don't think there's any 20 Q. And that could be because African Americans 20 dispute over the numbers. At least, you know, not in split their votes among the other African-American 21 21 terms of the EI estimates. 22 candidates? 22 Q. Okay. 23 A. Well, you've got five votes and --23 A. And the other homogeneous by Dr. --24 Q. I'm sorry. You have three votes, correct? 24 Q. Rodden? 25 A. I mean five black candidates. 25 A. No. Campbell are a different -- or a

	Page 61		Page 63
1	percentage of something different than what I wrote in	1	A. I don't think I mentioned Dr. Graves in that
2	my report.	2	paragraph.
3	Q. But is it your opinion that despite the fact	3	Q. Okay. But you do state that the fact that
4	that more than half of the votes cast in this election	4	this litigation was filed could have affected the
5	were cast for African-American candidates, that this	5	election, right?
6	was a racially polarized election? Is that	6	A. Yes.
7	A Yes.	7	Q. Are you familiar with the amount of publicity
8	Q. And that	8	this case received in the St. Louis media market?
9	A. You can tell from the candidate choices here	9	A. No. But I am familiar with the fact that this
10	that this is a racially polarized election resulting in	10	happened after the incident in Ferguson.
11	only one seat of the three going to an African-American	11	Q. Would you change your opinion that this
12	candidate.	12	litigation could have influenced the election if you
13	Q. So if the election were highly polarized and	13	learned that this litigation was only reported on the
14	African-American candidates received a majority of the	14	day that the litigation was filed within the St. Louis
15	votes cast, can you explain the logic through which	15	market on December 18th, 2014?
16	white block voting explains the fact that	16	A. No.
17	African-American candidates of choice failed to sweep	17	Q. Would it change your opinion that this
18	the election?	18	litigation could have influenced the election if you
19	A. Failed to what?	19	learned that on December 18th of 2014 three TV stations
20	Q. Sweep the election.	20	spent less than thirty seconds on the story and have
21	A. Sorry. Can you repeat the question, please?	21	never mentioned it again?
22	Q. If the election was highly polarized and	22	A. On the story being this litigation?
23	African-American candidates received a majority of the	23	Q. This litigation.
24	votes cast, can you explain the logic through which	24	A. No.
25	white block voting explains the fact that	25	Q. So is it your opinion that this story reported
	P. (2)		D (1
4	Page 62	1	Page 64
1	African-American candidates of choice failed to sweep		
	•		one day in December influenced voters in April?
2	the election?	2	A. I don't know if the story influenced voters or
2 3	the election? A. Sure. The crossover vote for Savala, the	2	A. I don't know if the story influenced voters or the candidate pool influenced voters.
2 3 4	the election? A. Sure. The crossover vote for Savala, the crossover vote for Johnson, and the more cohesive vote	2 3 4	A. I don't know if the story influenced voters or the candidate pool influenced voters. Q. But you state in your opinion that you believe
2 3 4 5	the election? A. Sure. The crossover vote for Savala, the crossover vote for Johnson, and the more cohesive vote for the three black, excuse me, three white candidates	2 3 4 5	A. I don't know if the story influenced voters or the candidate pool influenced voters. Q. But you state in your opinion that you believe the litigation could have influenced the election; is
2 3 4 5 6	the election? A. Sure. The crossover vote for Savala, the crossover vote for Johnson, and the more cohesive vote for the three black, excuse me, three white candidates in the race among white voters.	2 3 4 5 6	A. I don't know if the story influenced voters or the candidate pool influenced voters. Q. But you state in your opinion that you believe the litigation could have influenced the election; is that right?
2 3 4 5 6 7	the election? A. Sure. The crossover vote for Savala, the crossover vote for Johnson, and the more cohesive vote for the three black, excuse me, three white candidates in the race among white voters. Q. All right. Now let's go to 2015.	2 3 4 5 6 7	A. I don't know if the story influenced voters or the candidate pool influenced voters. Q. But you state in your opinion that you believe the litigation could have influenced the election; is that right? A. I say the election was postlitigation. And I
2 3 4 5 6 7 8	the election? A. Sure. The crossover vote for Savala, the crossover vote for Johnson, and the more cohesive vote for the three black, excuse me, three white candidates in the race among white voters. Q. All right. Now let's go to 2015. MS. ORMSBY: If I can get through this	2 3 4 5 6 7 8	A. I don't know if the story influenced voters or the candidate pool influenced voters. Q. But you state in your opinion that you believe the litigation could have influenced the election; is that right? A. I say the election was postlitigation. And I believe what I focus on is the very different type of
2 3 4 5 6 7 8	the election? A. Sure. The crossover vote for Savala, the crossover vote for Johnson, and the more cohesive vote for the three black, excuse me, three white candidates in the race among white voters. Q. All right. Now let's go to 2015. MS. ORMSBY: If I can get through this election, Julie, I think it would be a good place to	2 3 4 5 6 7 8 9	A. I don't know if the story influenced voters or the candidate pool influenced voters. Q. But you state in your opinion that you believe the litigation could have influenced the election; is that right? A. I say the election was postlitigation. And I believe what I focus on is the very different type of candidate pool in 2015 compared to the previous two
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Sure. The crossover vote for Savala, the crossover vote for Johnson, and the more cohesive vote for the three black, excuse me, three white candidates in the race among white voters. Q. All right. Now let's go to 2015. MS. ORMSBY: If I can get through this election, Julie, I think it would be a good place to stop. MS. EBENSTEIN: Okay. Sure. MS. ORMSBY: And take a lunch break. Q. (By Ms. Ormsby) So the title of your section of your report dealing with the 2015 election is The Postlitigation Election of 2015; is that right? You can look at it. On page on page 11. Top of page 11. A. All right. Of my initial report. I believe I also address it in my rebuttal report. Q. Okay. If you could look at paragraph 32 of your initial report. And you state that the special circumstances could have influenced the election in	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. I don't know if the story influenced voters or the candidate pool influenced voters. Q. But you state in your opinion that you believe the litigation could have influenced the election; is that right? A. I say the election was postlitigation. And I believe what I focus on is the very different type of candidate pool in 2015 compared to the previous two vote elections and the different kind of non-African-American voting behavior in that election. Q. And we're going to get to that but I want to focus on the litigation at this point in time. So you're saying it's not necessarily the filing of this litigation that affected the election? A. The filing of the litigation might have affected the candidate pool. Q. But not the voters? A. It may have influenced some voters. Q. And in order for it to have influenced voters, they would have had to hear the story on December 18th, correct?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Sure. The crossover vote for Savala, the crossover vote for Johnson, and the more cohesive vote for the three black, excuse me, three white candidates in the race among white voters. Q. All right. Now let's go to 2015. MS. ORMSBY: If I can get through this election, Julie, I think it would be a good place to stop. MS. EBENSTEIN: Okay. Sure. MS. ORMSBY: And take a lunch break. Q. (By Ms. Ormsby) So the title of your section of your report dealing with the 2015 election is The Postlitigation Election of 2015; is that right? You can look at it. On page on page 11. Top of page 11. A. All right. Of my initial report. I believe I also address it in my rebuttal report. Q. Okay. If you could look at paragraph 32 of your initial report. And you state that the special circumstances could have influenced the election in favor of Dr. Graves; is that correct?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. I don't know if the story influenced voters or the candidate pool influenced voters. Q. But you state in your opinion that you believe the litigation could have influenced the election; is that right? A. I say the election was postlitigation. And I believe what I focus on is the very different type of candidate pool in 2015 compared to the previous two vote elections and the different kind of non-African-American voting behavior in that election. Q. And we're going to get to that but I want to focus on the litigation at this point in time. So you're saying it's not necessarily the filing of this litigation that affected the election? A. The filing of the litigation might have affected the candidate pool. Q. But not the voters? A. It may have influenced some voters. Q. And in order for it to have influenced voters, they would have had to hear the story on December 18th, correct? A. If the story of the litigation influenced the

Page 65 Page 67 A. Or the result of change in the candidate pool? 1 you that says that? 1 2 Q. I'm talking strictly of the litigation. 2 A. I don't recall. 3 Whether the litigation -- filing of this litigation 3 Q. Are you aware of any publications that say influenced the election -- the voters in this election. 4 4 that? 5 A. We don't know the extent to which that may or 5 A. Court cases, decisions, 6 may not have occurred. 6 Q. Which court cases say that litigation -- the 7 Q. But you would agree that in order for it to 7 fact that a litigation has been filed has influenced 8 affect the voters in this election, they would have had 8 candidate pools? 9 to have first known about the story? 9 A. I believe there's a concern about that in the A. No. 10 10 Irving Independent School District case in Texas. 11 Q. No? 11 Q. And has the court determined that the 12 litigation filed influenced the candidate pool? 12 A. In order to affect the voters -- the effect on 13 the voters may well have been the candidate pool which 13 A. I believe the court took note that the 14 was -- could have been a function of the litigation. candidate pool was contrary to history in the 14 15 Q. So just to be clear, you are not saying that 15 postlitigation election. 16 the fact that this litigation was filed had any effect? 16 Q. Did the court find that it influenced the 17 Just the fact that this litigation is filed, that it 17 candidate pool? 18 had no effect, no voter went to the polls and said this 18 A. I don't recall if the court found it. The 19 litigation was filed and I'm going to influence the 19 court referenced the special circumstance situation in outcome of the litigation? That's not your testimony? 20 20 that case 21 A. No. My testimony is that the litigation, it 21 Q. But will you admit to me that you are not 22 could have affected some voters by itself. But it 22 aware of any peer-reviewed publication that makes the 23 looks to me like the very difference in the candidate 23 determination that the filing of litigation influences 24 pool after the litigation was filed could have then 24 the candidate pool in an election? 25 influenced voters. I don't believe voters have to have 25 A. I'd have to look at it. There is an article Page 66 Page 68 all that knowledge. 1 in Election Studies, which is a peer-reviewed 1 2 They go to the poll and they see one white 2 publication. 3 candidate and a second white candidate that's a very 3 Q. And when was that? 4 minor candidate. At least given the kind of voter 4 A. Maybe the -- might be the late '80s. And it 5 support she had from each group. Which means their 5 talks about the change in the candidate pool. I don't 6 choice really is, if they're not interested in the 6 know if it's point on to what you're asking. 7 minor candidate, and my estimate here is that only nine 7 point nine percent of the white voters voted for the 8 8 A. It could be. I forget when the litigation may 9 minor white candidate, and a two-vote election meant if 9 have been filed or -- there was litigation, I know, but 10 they weren't going to vote for that minor black 10 the article shows that the first election that we candidate, then they had to cast that other vote for 11 11 studied was the non-African-American voters dispersed 12 one of the three black candidates or withhold their 12 their votes allowing single-shot voting to result in 13 13 the election of a black candidate. 14 Q. Is there any political science research that 14 The next election, non-African-American voters shows that filing of litigation influences the 15 15 didn't disperse their votes much and cancelled out the 16 candidate pool? 16 choice of the African-American voters. 17 A. There are -- is there any political science 17 Where litigation came in, I'm sorry, I don't 18 research? 18 remember. 19 Q. Uh-huh. 19 Q. So it's not your opinion that the filing of 20 A. Sure. I'm a political scientist and I have 20 this litigation affected how -- the filing -- let me found that present in post litigation elections fairly 21 start all over. I don't want to put words in your 21 22 22 23 Q. Other than you, is there any published 23 Is it your opinion that the filing of this 24 research on this fact, that filing of litigation 24 litigation was remembered by white voters when they 25 influences the candidate pool? Is there anyone besides 25 went to the poll and they voted a specific way as a

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result of this litigation being filed?

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A. I think I've answered that. I said some voters may have been influenced, may have been influenced by the litigation. White voters that may not wanted to have a change to single-member districts. White voters who have been -- may have been told by others as litigation and they want a change and that sort of thing. That would be a direct effect. I don't know how much that happened.

There's also the second, the indirect or second effect, which is the candidate pool changed after the litigation was filed different from the previous two candidate pools. And basically -- and I've seen this before. I saw this in Norfolk. To create an open seat in effect for a, in that case, African-American candidate.

In the Irving Independent School District, after the litigation was filed they create -- all of a sudden a Latino ran unopposed for the first time in the history of the school district. And this is a similar situation.

You know, only one, I would say, serious black -or white candidate, I'm sorry, but, I mean, I base that again on the kind of votes they received.

But the second seat, I believe, was -- became much

Q. So you could doubt him?

A. I don't know who the candidate is. I don't

3 know what his integrity is. You're telling me he said

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Q. Uh-huh. If he said that, if he gave his reasons under oath in a deposition on why he didn't run for reelection, or should we discount his reasons?

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Page 72

A. I don't know whether we should or should not.

Q. Okay. And would it surprise you that the

10 candidates who ran in the 2015 election and won, both

11 Dr. Graves and Mr. Ebert, testified in their deposition

12 that not a single person mentioned this lawsuit to them

13 at any point in time prior to filing, while

campaigning, or working the polls on election day?

A. That they never heard of the litigation?

Q. That not a single person mentioned this

litigation to them.

A. But that doesn't mean they weren't aware of 18

19

20 Q. If they testified that they weren't aware of

21

22 A. That they were not aware of the litigation?

23

A. And they're on the school board? The one of

25 them was.

Page 70

- more reachable by African-American voters because the 1
- 2 other black -- other white candidate was a minor
- 3 candidate.

Q. Your supposition that -- or your thought that the filing of this litigation could have influenced the candidate pool would require that at least the candidates were aware of this litigation; is that

correct? 8

> A. Actually, I don't know that the candidates would be aware of it. But the candidates may have been

11 encouraged in some cases not to run, potential

12 candidates. That can be influenced by people saying

13 you're not going to get endorsements, you're not going

14 to get much money, or whatever. We prefer you not run.

15 Leaving one major white candidate and one minor white

16 candidate in a two-vote, two-seat election which could

17 have opened the door better than any of the previous

doubt his reasons, correct?

18 elections to an African-American candidate winning one

19 of the seats.

> Q. And you would have no reason to doubt a candidate or an incumbent who decided not to run that year who testified under oath of the reasons for which he decided not to run, you would have no reason to

A. I would have to hear what his reasons were.

Q. One of them was.

A. Yes. 2

3 Q. But the unincumbent did not know of this when

she filed to run, that wouldn't surprise you? I

5 already asked you that.

6 A. No, I don't think that would surprise me. She

7 doesn't have to know about the litigation to run.

Q. Okay.

9 A. If Ebert said he didn't know about it, that

10 would surprise me.

that identifies a situation like this where people

Q. Okay. Is there any political science research

12 13 voted strategically to affect lawsuits?

A. And you're saying published in political

science; is that right or?

Q. I didn't ask that yet.

A. Oh, okay.

18 Q. My question was, Is there any political

19 science research that identifies a situation like this

where people voted strategically to affect lawsuits?

My next question will be is it published. But my

22 first question, is there any research?

23 A. And you're saying this research would have

documented strategic voting on the part of voters? 24

Q. Uh-huh.

	Page 73		Page 75
1	A. I don't I don't recall a particular study.	1	A. Well, the second choice got fourteen point
2	Q. Okay. Is there any political science	2	five percent of the vote.
3	literature or research saying that the reaction of	3	Q. And to be clear, the minority-preferred
4	whites to a racially polarizing event is to vote for	4	candidate in this election is Dr. Graves?
5	black candidates?	5	A. Correct.
6	A. That the reaction of whites?	6	Q. So you've stated that African Americans
7	Q. In reaction to a racially polarizing event,	7	typically prefer African-American candidates in
8	that the reaction of whites is to vote for black	8	Ferguson-Florissant. So I'm wondering, why do you
9	candidates?	9	think it is that neither of the other two
10	A. I don't recall it.	10	African-American candidates is a candidate of choice
11	Q. And likewise, is there literature suggesting	11	for African Americans?
12	that the reaction of blacks to a racially polarizing	12	A. Well, in 2015, is that what we're?
13	event is to vote for white candidates?	13	Q. Uh-huh.
14	A. I don't recall it.	14	A. Okay. Certainly Dr. Rodden says Graves
15	Q. Okay. And you acknowledge that the candidate	15	campaigned for single-shot votes. That also there is
16	who received the second most black votes was Dameron,	16	no evidence of that occurring in the previous
17	correct?	17	elections. And the U.S. Supreme Court has specifically
18	A. Correct. In 2015.	18	said that single-shot voting is one of the special
19	Q. And Dameron is a white candidate, correct?	19	circumstances that might result in the aberrant
20	A. Correct.	20	election of a minority-candidate.
21	Q. So considering these facts, do you believe	21	Q. Okay. So in your report you characterize
22	that most political scientists would conclude that this	22	Ms. Dameron as a minor candidate. And since your
23	lawsuit influenced the 2015 election at all?	23	estimate suggests that she's the second place finisher
24	A. I don't know what most political scientists	24	among African Americans, presumably do you mean that
25	would conclude. I certainly think a lot of expert	25	she's a minor candidate among whites?
	Page 74		Page 76
- 4			
1	witnesses would understand that this could have	1	A. Given her electoral support, I would say she's
2	witnesses would understand that this could have impacted the results of the 2015 election.	1 2	A. Given her electoral support, I would say she's a minor candidate across the board.
			**
2	impacted the results of the 2015 election.	2	a minor candidate across the board.
2 3	impacted the results of the 2015 election. Q. And it's still your opinion that this lawsuit	2	a minor candidate across the board. Q. Okay. And, in fact, whites preferred
2 3 4	impacted the results of the 2015 election. Q. And it's still your opinion that this lawsuit influenced the 2015 election? A. I said this was a special circumstance. Now, I don't have evidence. I mean, I don't have what would	2 3 4	a minor candidate across the board. Q. Okay. And, in fact, whites preferred African-American candidates over her; is that right? A. Yes. Q. And you're not making any sort of judgment
2 3 4 5 6 7	impacted the results of the 2015 election. Q. And it's still your opinion that this lawsuit influenced the 2015 election? A. I said this was a special circumstance. Now, I don't have evidence. I mean, I don't have what would be called the smoking gun. But a smoking gun isn't	2 3 4 5 6 7	a minor candidate across the board. Q. Okay. And, in fact, whites preferred African-American candidates over her; is that right? A. Yes. Q. And you're not making any sort of judgment about her capabilities or her attractiveness as a
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2 3 4 5 6 7 8 9 10 11 12 13	impacted the results of the 2015 election. Q. And it's still your opinion that this lawsuit influenced the 2015 election? A. I said this was a special circumstance. Now, I don't have evidence. I mean, I don't have what would be called the smoking gun. But a smoking gun isn't needed to reach the inference. The court doesn't have to find a smoking gun. It can find circumstantial evidence that would support that conclusion. Q. And what circumstantial evidence is there that would support that conclusion? A. The difference in the candidate pool.	2 3 4 5 6 7 8 9 10 11 12 13	a minor candidate across the board. Q. Okay. And, in fact, whites preferred African-American candidates over her; is that right? A. Yes. Q. And you're not making any sort of judgment about her capabilities or her attractiveness as a candidate as a result of being a minor candidate, correct? A. No. I'm looking at the estimates. I think they're the same for Mr. Rodden Dr. Rodden and I show that this is a minor candidate. Her black vote was fourteen point five percent. Her white vote was
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	impacted the results of the 2015 election. Q. And it's still your opinion that this lawsuit influenced the 2015 election? A. I said this was a special circumstance. Now, I don't have evidence. I mean, I don't have what would be called the smoking gun. But a smoking gun isn't needed to reach the inference. The court doesn't have to find a smoking gun. It can find circumstantial evidence that would support that conclusion. Q. And what circumstantial evidence is there that would support that conclusion? A. The difference in the candidate pool. Q. From when? A. From the four from the previous two-seat elections under analysis. Q. So for the record once again, how many African-American candidates of choice did you identify for the 2015 election? A. How many candidates of choice what? Q. Did you identify. Minority-preferred candidates did you identify for the 2015 election?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	a minor candidate across the board. Q. Okay. And, in fact, whites preferred African-American candidates over her; is that right? A. Yes. Q. And you're not making any sort of judgment about her capabilities or her attractiveness as a candidate as a result of being a minor candidate, correct? A. No. I'm looking at the estimates. I think they're the same for Mr. Rodden Dr. Rodden and I show that this is a minor candidate. Her black vote was fourteen point five percent. Her white vote was nine point nine percent. Q. And we talked about this briefly, but going back to the 2013 election, you would also identify Mr. Thomas as a minor candidate; is that right? A. Yes. Q. So is it your claim that absent special circumstances African Americans cannot elect candidates of choice, but in 2015 there was a special circumstance related to Ms. Dameron's status as a minor candidate?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	impacted the results of the 2015 election. Q. And it's still your opinion that this lawsuit influenced the 2015 election? A. I said this was a special circumstance. Now, I don't have evidence. I mean, I don't have what would be called the smoking gun. But a smoking gun isn't needed to reach the inference. The court doesn't have to find a smoking gun. It can find circumstantial evidence that would support that conclusion. Q. And what circumstantial evidence is there that would support that conclusion? A. The difference in the candidate pool. Q. From when? A. From the four from the previous two-seat elections under analysis. Q. So for the record once again, how many African-American candidates of choice did you identify for the 2015 election? A. How many candidates of choice what? Q. Did you identify. Minority-preferred candidates did you identify for the 2015 election? A. I believe one.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	a minor candidate across the board. Q. Okay. And, in fact, whites preferred African-American candidates over her; is that right? A. Yes. Q. And you're not making any sort of judgment about her capabilities or her attractiveness as a candidate as a result of being a minor candidate, correct? A. No. I'm looking at the estimates. I think they're the same for Mr. Rodden Dr. Rodden and I show that this is a minor candidate. Her black vote was fourteen point five percent. Her white vote was nine point nine percent. Q. And we talked about this briefly, but going back to the 2013 election, you would also identify Mr. Thomas as a minor candidate; is that right? A. Yes. Q. So is it your claim that absent special circumstances African Americans cannot elect candidates of choice, but in 2015 there was a special circumstance related to Ms. Dameron's status as a minor candidate? A. Well, also related to Ms. Graves' campaign,

Page 77 Page 79 1 different that I don't have memorized right now. 1 2 Q. Uh-huh. 2 Q. And when you say there's not a previous 3 A. And in the rebuttal report as well, things 3 election, you're talking in the last five elections? pulled from Rodden's report. A. The ones I analyzed. 4 4 5 Q. Uh-huh. Q. You didn't analyze any prior to that, correct? 5 6 A. That in effect said, Wow, 2015 was really 6 A. No. I'm looking at recent elections. 7 different than everything that had gone before. 7 Q. Okay. Just wanted to clarify that when you 8 Q. So since whites did not prefer Ms. Dameron to 8 say there's not a previous election, you're only black candidates like Hines and Person, are you stating 9 9 talking about the previous -- the last five elections. 10 that this opened the door to victory by Dr. Graves? 10 A. Well, previous to this would be the last four. 11 A. It certainly facilitated that. 11 Q. Okay. Thank you. 12 Q. Okay. And you're stating that there was no 12 And we've already established that there's no 13 solid white second candidate so this allowed Dr. Graves 13 political science literature that states that filing of 14 to get an unusually large number of white crossover this litigation causes voters to then go and elect a 14 15 votes and achieve victory? 15 certain candidate because they're against single-member 16 A. First of all, I didn't say -- how did you 16 17 describe her? Not a solid candidate? A. No. I don't think I said there's none, I said 17 18 Q. Since there was --18 I don't recall any. 19 A. -- I never said anything about solid. I have 19 Q. Okay. If you can find some, will you give it 20 said clearly that based on the votes she received, 20 to your attorney to provide to us because we've been 21 she's a minor candidate. 21 unable to find any. 22 Q. Okay. So --A. If my attorney asks me to do it. 22 23 A. Now, on the crossover vote, that's a spot 23 Q. Okay. Great. 24 where, who knows, people that didn't want single-member 24 Let me put it this way. If you plan to rely on 25 districts might have all of a sudden decided they're 25 any at trial, I'll ask him to please give me the Page 78 Page 80 going to vote for Graves or Hines. That hadn't 1 literature if you can find it. 1 2 happened previously. 2 MS. EBENSTEIN: Of course if he relied on 3 Q. So we're back again --3 anything at trial, we'll give it to you beforehand. 4 A. -- Specifically we're back to -- except in the 4 Q. (By Ms. Ormsby) So whether -- whether whites likes Mr. Hines or Dr. Graves or disliked Ms. Dameron, 5 previous two-vote elections whites were not giving that 5 6 kind of crossover vote to even one black candidate, let 6 how is it any different from simply observing that 7 whites cast crossover votes for Dr. Hines and -- I 8 Q. So again, you said maybe people didn't want 8 mean, Mr. Hines and Dr. Graves instead of voting for 9 single-member districts so they voted for a black 9 Dameron? 10 candidate? You just said that, right? 10 A. How is it? I'm sorry, how is it? 11 A. I just said that. Maybe there could be some. Q. How is it different from just simply observing 11 12 I wouldn't doubt that. 12 whites cast crossover votes for Mr. Hines and 13 Q. But we've already established the fact that 13 there's not even circumstantial evidence to indicate 14 A. Well, the difference is it hasn't happened 14 15 that that's the case, correct? 15 like that before. 16 A. Well, circumstantial evidence could be based 16 Q. Well, couldn't it --17 on the fact that Dameron was a minor candidate in 17 A. In the ones I analyzed. 18 the -- in the white candidate pool that got very little Q. Couldn't it be the case that Dr. Graves and 18 19 non-African-American votes. All right? Again, that 19 Mr. Hines live in majority white neighborhoods and got 20 had not happened before. No, excuse me. Graves then 20 a lot of support from their white friends and 21 gets over twenty percent and Hines gets over twenty 21 neighbors? 22 22 A. I don't know where their support came from. 23 There's not a two-vote election previously that I 23 All I know is that's not happened in the other 24 have looked at that matches that kind of behavior. 24 elections I analyzed. 25 Doesn't even come close. So this election was 25 Q. But that could be the case, right?

	Page 81		Page 83
1	A. Well, it could be the case that other black	1	Q. No, no, no, no.
2	candidates lived in white neighborhoods and didn't get	2	A. Oh, homogeneous precinct?
3	this kind of support in previous elections.	3	Q. Yes.
4	Q. Couldn't it be the case that they knocked on a	4	A. My apologies. I'm sorry. When you said
5	lot of doors of a lot of houses occupied by both black	5	twenty okay.
6	and white voters?	6	Q. Okay.
7	A. I would hope all candidates go to both racial	7	A. All right. And I'm at twenty-one which is
8	areas and knock on houses in a way that is not racially	8	homogeneous. Correct.
9	selective.	9	Q. Okay. Your estimate in 2013 for Mr. Henson
10	Q. But can we agree that not all candidates	10	was twenty point four percent; is that right?
11	campaign in the same way?	11	A. Of the white crossover.
12	A. Well, I think so, yes.	12	Q. Right. And if you scan down then, what's your
13	Q. And can we agree that some candidates work a	13	estimate of the white crossover
14	lot harder than others?	14	A May I? I'm sorry.
15	A. I believe that's the case.	15	Q. Uh-huh.
16	Q. Okay. So you don't believe you're being	16	A. To be clear.
17	cynical when you state that white support for black	17	Q. Uh-huh.
18	candidates cannot possibly be sincere? That there has	18	A. In what we're identified as white homogeneous
19	to be some failure on the part of a white candidate or	19	precincts?
20	there has to be some sort of special circumstance that	20	Q. Correct.
21	makes them want to vote for the black candidate in	21	Okay. And if you scan down further on the page,
22	order to thwart the election?	22	what is that number for Dr. Graves?
23	MS. EBENSTEIN: I'm going to object that that	23	A. Twenty-one point four.
24	mischaracterizes his previous testimony.	24	Q. So one percentage point different, correct?
25	MS. ORMSBY: Okay.	25	A. Yes.
	Page 82		Page 84
1	A. Yeah. I don't believe I said anything about	1	Q. So isn't it odd that there would be a special
2	sincere. And there is sincere voting. There is	2	circumstance when the white crossover vote is so
3	strategic voting. Are you talking about that, or what	3	similar between those two candidates in two different
4	do you mean in that context by sincere?	4	elections?
5	Q. (By Ms. Ormsby) Are you stating that or	5	A. Is it odd?
6	let me put it this way.	6	Q. Uh-huh.
7	Do you agree that there in this election there	7	A. We don't
8	could have been sincere white crossover voting for	8	Q. You stated there was
9	Dr. Graves because they believed she was the best	9	A I mean, first of all, these are precincts
10	candidate for the job?	10	that are less than these are precincts that are up
11	A. You mean the reason they voted for her was	11	to fifteen percent black, excuse me, white or excuse
11 12	A. You mean the reason they voted for her was simply because she was the best candidate?	11 12	· · · · · · · · · · · · · · · · · · ·
	-		to fifteen percent black, excuse me, white or excuse
12	simply because she was the best candidate?	12	to fifteen percent black, excuse me, white or excuse me, non-African American. They may not even be the
12 13	simply because she was the best candidate? Q. Right.	12 13	to fifteen percent black, excuse me, white or excuse me, non-African American. They may not even be the same precincts. I'd have to look at the footnote to
12 13 14	simply because she was the best candidate? Q. Right. A. Out of this candidate pool?	12 13 14	to fifteen percent black, excuse me, white or excuse me, non-African American. They may not even be the same precincts. I'd have to look at the footnote to see if 'cause I've given differences in population.
12 13 14 15	simply because she was the best candidate? Q. Right. A. Out of this candidate pool? Q. Yes.	12 13 14 15	to fifteen percent black, excuse me, white or excuse me, non-African American. They may not even be the same precincts. I'd have to look at the footnote to see if 'cause I've given differences in population. Sometimes there are more; sometimes there are less.
12 13 14 15 16	simply because she was the best candidate? Q. Right. A. Out of this candidate pool? Q. Yes. A. It's possible. Q. Okay. A. Sure.	12 13 14 15 16	to fifteen percent black, excuse me, white or excuse me, non-African American. They may not even be the same precincts. I'd have to look at the footnote to see if 'cause I've given differences in population. Sometimes there are more; sometimes there are less. But and we don't know as I say, that's the
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	Page 85		Page 87
1	A. Okay.	1	numbers to see if that actually was part of the cause.
2	Q. Thank you for calling me on it.	2	MS. ORMSBY: Okay. I think this is a great
3	You agree that Dr. Rodden and your EI analysis	3	place to stop for lunch. It is ten after 12:00.
4	ended up with very similar numbers, correct?	4	(Lunch break.)
5	A. Yes, I do agree with that.	5	Q. (By Ms. Ormsby) Dr. Engstrom, while we were
6	Q. So would it surprise you that when	6	on break did you discuss any of your answers to the
7	Dr. Rodden that Dr. Rodden analyzed the white	7	deposition with your attorneys?
8	support of Gwen Thomas, Doris Graham, and other	8	A. No.
9	African-American candidates that they routinely	9	Q. All right. Let's I want to ask you some
10	received around twenty percent of white support in the	10	questions about the American Community Survey. The
11	past?	11	ACS. Do you find do you consider the ACS reliable?
12	A. I don't know that. I mean, I'd have to look	12	Do you know what it is first?
13	at his report.	13	A. Yes.
14	MS. EBENSTEIN: Since we have a number of	14	Q. Okay.
15	candidates named Thomas, can you specify which Thomas	15	•
16		16	A. I know what it is. I don't myself use it
17	you're asking about? MS. ORMSBY: It's Gwen Thomas.	17	much. I know in some of the smaller jurisdictions you can get pretty high standard confidence intervals and
		17	0 1 3 0
18	MS. EBENSTEIN: Which area is she in?		things. But I'm not a demographer.
19	MS. ORMSBY: I think these were in previous	19	Q. Have you ever used the ACS when you've
20	elections so he would Dr. Engstrom wouldn't have	20	analyzed VRA cases in the past?
21	done those calculations.	21	A. I believe I had data that was probably from
22	MS. EBENSTEIN: Okay.	22	ACS and given to me.
23	Q. (By Ms. Ormsby) Just a couple more questions	23	Q. Uh-huh.
24	and I think we hit on this. You do identify Mr. Thomas	24	A. Latino cases. Citizenship often matters and
25	in 2013 as a minor candidate; is that right?	25	often the ACS is the source of citizenship data for the
	Page 86		Page 88
1		l .	
1	A. Yes.	1	registered polarized voting analysis. Might start
2	A. Yes.Q. And so would your same logic apply that there	1 2	registered polarized voting analysis. Might start saying RPV; is that all right?
2	Q. And so would your same logic apply that there	2	saying RPV; is that all right?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. And so would your same logic apply that there was lots of black crossover vote to support Hogshead and Brown, which helped push them over the top to win over Henson? A. I'd have to look at the numbers to say that it did push them over the top. It certainly could have been could have affected that. Q. And would that be any different than the analysis you did in 2015 with regard to Dr. Graves and the minor candidate Ms. Dameron? A. I would say it's fairly similar. It doesn't have five candidates but it's still basically in the African-American side. One candidate that's clearly the choice and one candidate that appears to be minor. So if you're not if African-American voters are not going to vote for Thomas for whatever reason but, I mean, he got a very small vote from them. If they're going to use their second vote, they have a choice between two whites. That's it. Q. And that would cause them the white candidate to win over the minor candidate, correct? A. I don't know if it caused it.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	saying RPV; is that all right? So, yes, in that sense. And sometimes, if I was dealing with demographics, I would look at the more recent estimates out of the ACS rather than an old census. Q. Did you testify or provide an expert report in university university got that on the brain United States of America v. Euclid City School District Board of Education? I think it was in your deposition. I think it was taken in May of 2009. A. I believe so. Q. And is that a Section 2 VRA case? A. This is the Euclid City School District? Q. Uh-huh. A. Okay. Yes, I did testify in that case. Q. And that's a Section 2 VRA case? A. Yes. When I was involved it was strictly a remedial portion, I believe. Q. Did you rely on the ACS to calculate the black voting age population in that case? A. I don't recall. MS. ORMSBY: Can I have the Engstrom depo,

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1	identification.)	1	A. I don't know what that would be.
2	Q. (By Ms. Ormsby) Turn to page 26.	2	Q. Okay. One of the experts in this case
3	A. I'm there.	3	determined that according to the ACS, forty-eight point
4	Q. Are you there?	4	nine percent of the voting age population is single
5	A. Yep.	5	race black and forty-seven point two four percent is
6	Q. You've got answer, question, answer, question,	6	single race I mean is white VAP?
7	answer, question. And the question reads: Isn't it	7	A. So forty-eight point nine is black VAP?
8	true that your conclusion is based solely on your	8	Q. Yeah, single race black. And forty-seven
9		9	· · · · · · · · · · · · · · · · · · ·
10	calculation that the black percentage of the voting age population in Euclid according to the 2005-2007	10	point two four is single race white VAP.
11		11	A. Okay.
	estimate for the American Community Survey is a hundred	12	(Interruption.)
12	and sixty point eight percent of the threshold of	13	Q. (By Ms. Ormsby) So in other words, African
13	exclusion for a three-seat election and a hundred		Americans with these numbers are a plurality of the
14	twenty point seven times the value of a threshold for a	14	voting age population. Have you ever go ahead. Do
15	two-seat election?	15	you disagree with that?
16	Did I read that question correctly?	16	A. Oh, this is based on solely one race
17	A. You read the transcript correctly, yes.	17	Q. Right.
18	Q. Okay. And then you there's some you	18	A for the both groups.
19	asked to get clarification, or you asked me if I said	19	Q. Correct?
20	that in the report. There's another question that has	20	A. This would be a plurality. Yes. Based on
21	to do with the same thing if you want to peruse it.	21	these numbers it would be a plurality.
22	And then finally you give your answer: Well, my	22	Q. Okay. Have you ever been involved in a case
23	conclusion is based on the fact that the voting age	23	where the minority and white VAP are so close using a
24	population based on the ACS survey is substantially	24	plaintiff's expert's own numbers?
25	higher, I would say, than the threshold of exclusion.	25	A. I don't recall one.
	D 00		
	Page 90		Page 92
1	_	1	•
1 2	Did I read your answer correctly?	1 2	Q. Okay.
2	Did I read your answer correctly? A. Yes, you did.	2	Q. Okay. A. I mean, I don't know for sure but I don't
2	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on	2 3	Q. Okay. A. I mean, I don't know for sure but I don't recall one.
2 3 4	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS?	2 3 4	Q. Okay.A. I mean, I don't know for sure but I don't recall one.Q. Would you say that a more typical VRA case
2 3 4 5	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer	2 3 4 5	 Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts
2 3 4 5 6	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly.	2 3 4 5 6	 Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent
2 3 4 5 6 7	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay.	2 3 4 5 6 7	 Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population?
2 3 4 5 6 7 8	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly.	2 3 4 5 6 7 8	 Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical.
2 3 4 5 6 7 8 9	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay.	2 3 4 5 6 7 8	 Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in
2 3 4 5 6 7 8 9	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant.	2 3 4 5 6 7 8 9	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged
2 3 4 5 6 7 8 9 10	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied	2 3 4 5 6 7 8 9 10	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving
2 3 4 5 6 7 8 9 10 11	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS	2 3 4 5 6 7 8 9 10 11	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District.
2 3 4 5 6 7 8 9 10 11 12 13	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay.	2 3 4 5 6 7 8 9 10 11 12 13	 Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second.
2 3 4 5 6 7 8 9 10 11 12 13	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct?	2 3 4 5 6 7 8 9 10 11 12 13	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita?
2 3 4 5 6 7 8 9 10 11 12 13 14	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct? A. That could be correct. According to the	2 3 4 5 6 7 8 9 10 11 12 13 14	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita? Q. Your yeah, your CV.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct? A. That could be correct. According to the transcript.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita? Q. Your yeah, your CV. A. Identified five at-large election cases?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct? A. That could be correct. According to the transcript. Q. Have you ever been involved in a VRA case where the BVAP is fifty percent or higher?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita? Q. Your yeah, your CV. A. Identified five at-large election cases? Q. Uh-huh. A. I'm not aware of that.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct? A. That could be correct. According to the transcript. Q. Have you ever been involved in a VRA case where the BVAP is fifty percent or higher? A. I'm not recalling one.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita? Q. Your yeah, your CV. A. Identified five at-large election cases? Q. Uh-huh. A. I'm not aware of that. Q. Okay. Did you testify or provide a report in
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct? A. That could be correct. According to the transcript. Q. Have you ever been involved in a VRA case where the BVAP is fifty percent or higher? A. I'm not recalling one. Q. How about one forty-nine percent or higher?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita? Q. Your yeah, your CV. A. Identified five at-large election cases? Q. Uh-huh. A. I'm not aware of that. Q. Okay. Did you testify or provide a report in Benavidez v. Irving Independent School District?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct? A. That could be correct. According to the transcript. Q. Have you ever been involved in a VRA case where the BVAP is fifty percent or higher? A. I'm not recalling one. Q. How about one forty-nine percent or higher? A. Once again, I don't I don't remember the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita? Q. Your yeah, your CV. A. Identified five at-large election cases? Q. Uh-huh. A. I'm not aware of that. Q. Okay. Did you testify or provide a report in Benavidez v. Irving Independent School District? A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct? A. That could be correct. According to the transcript. Q. Have you ever been involved in a VRA case where the BVAP is fifty percent or higher? A. I'm not recalling one. Q. How about one forty-nine percent or higher? A. Once again, I don't I don't remember the VAP numbers for I've done a lot of cases, so.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita? Q. Your yeah, your CV. A. Identified five at-large election cases? Q. Uh-huh. A. I'm not aware of that. Q. Okay. Did you testify or provide a report in Benavidez v. Irving Independent School District? A. Yes. Q. How about U.S. v. Euclid City District Board
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct? A. That could be correct. According to the transcript. Q. Have you ever been involved in a VRA case where the BVAP is fifty percent or higher? A. I'm not recalling one. Q. How about one forty-nine percent or higher? A. Once again, I don't I don't remember the VAP numbers for I've done a lot of cases, so. Q. Do you remember approximately what the highest	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita? Q. Your yeah, your CV. A. Identified five at-large election cases? Q. Uh-huh. A. I'm not aware of that. Q. Okay. Did you testify or provide a report in Benavidez v. Irving Independent School District? A. Yes. Q. How about U.S. v. Euclid City District Board of Education?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Did I read your answer correctly? A. Yes, you did. Q. Okay. So would you say that you did rely on the ACS? A. Part you read half of that answer correctly. Q. Oh, okay. A. You read the first sentence correctly. Q. Okay. A. I don't know if you the other's relevant. Q. I just want to make the point that you relied on the ACS A. Okay. Q for this; is that correct? A. That could be correct. According to the transcript. Q. Have you ever been involved in a VRA case where the BVAP is fifty percent or higher? A. I'm not recalling one. Q. How about one forty-nine percent or higher? A. Once again, I don't I don't remember the VAP numbers for I've done a lot of cases, so.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Okay. A. I mean, I don't know for sure but I don't recall one. Q. Would you say that a more typical VRA case where plaintiffs are challenging in at-large districts that the minority group makes up around forty percent of the voting age population? A. I don't think that's typical. Q. Your CV indicates that you've testified in five cases in which at-large districts were challenged under Section 2 of the VRA. Benavidez v. Irving Independent School District. A. Hold on a second. What did you say my vita? Q. Your yeah, your CV. A. Identified five at-large election cases? Q. Uh-huh. A. I'm not aware of that. Q. Okay. Did you testify or provide a report in Benavidez v. Irving Independent School District? A. Yes. Q. How about U.S. v. Euclid City District Board

	Page 93		Page 95
1	Texas?	1	consistently. But there may have been one when there
2	A. Yes.	2	could have been more.
3	Q. Montes v. City of Yakima?	3	Q. Okay.
4	A. Yes.	4	A. But I don't retain those kind of facts from
5	Q. Rodriguez v. Grand Prairie Independent School	5	case to case.
6	District?	6	Q. So you can't name a specific case in where
7	A. I testified but did I write a report? I must	7	there was consistent minority representation?
8	have.	8	A. Okay. Farmers Branch, I don't think there
9	Q. I think you did.	9	was. Grand Prairie went no further than the depo. I
10	A. Okay.	10	mean, I just don't.
11	Q. I'm not going to testify but I think you did.	11	Q. Okay.
12	Do you remember which of those cases have the	12	A. These are descriptive facts that I don't
13	highest minority VAP according to the numbers accepted	13	retain.
14	by the courts?	14	Q. That's fine.
15	A. No, I don't.	15	A. Okay.
16	Q. Does it sound correct that Euclid City was	16	Q. I don't know or I don't remember is a fine
17	forty percent?	17	answer.
18	A. I really don't know.	18	A. Okay.
19	Q. So you don't know if the other cases were	19	Q. Are you aware that the Ferguson-Florissant
20	less than forty percent, you don't have any	20	School District has consistently elected minority
21	recollection?	21	representation going back to the 1980s?
22	A. I don't remember what the VAP figures were for	22	A. Yes, I know there are old elections where
23	those cases, no.	23	African Americans have been elected.
24	Q. Well, would you agree that a VRA case in which	24	Q. Have you ever provided an opinion in all of
25	the minority VAP and the white VAP are roughly	25	the VRA cases that you've been involved in that there
	Page 94		Page 96
1	identical is rather unusual?	1	was not racially polarized voting?
2	A. Well, yes, I think unusual would be an	2	A. Well, the answer would be yes, in terms of not
3	appropriate term.	3	legally significant racially polarized voting.
4	Q. Okay. And do you recall in the five cases I	4	Q. And what case what cases would you have
5	just mentioned, was there ever a minority candidate	5	would you have provided that sort of opinion?
6	that had been elected?	6	A. That was a case involving the Minneapolis City
7	A. Prior to the case?	7	Council in Minnesota.
8	Q. Uh-huh.	8	Q. Do you know when that was?
9	A. That's another fact that I just don't recall.	9	A. No. Quite a while back.
10	I mean, I wouldn't be surprised if in some there were	10	Q. Is that the only case that you remember coming
11	and in others there weren't. But I don't remember.	11	to that conclusion?
12	Q. Have you well, let me ask. How many VRA	12	A. I have looked at data and told lawyers what I
13	cases have you been involved in where there's	13	could say and then not been retained. They may have
14	consistently been minority representation on an elected	14	been involved with no finding that racially polarized
15	body?	15	voting wasn't present but I don't have the details of
16	A. That I also don't know.	16	those things.
17	Q. Do you think it's often? More often than not?	17	Q. Okay. In a case for which you have been
18	A. That there has been	18	retained, have you ever offered an opinion that was
19	Q. Consist	19	contrary to your client's case?
20	A minority rep consistently? I I don't	20	A. Contrary to my client's case and I was
21	know if that would be consistently.	21	testifying?
22	Q. You don't know if you've been involved in	22	Q. Retained.
23	cases where African American or minorities have	23	A. I don't recall that.
	consistently been elected to the governing body?	24	Q. Have you ever been involved in a VRA case
24 25	A. It's possible that there were some that were	25	where the plaintiffs propose a voting district of only

	Page 97		Page 99
1	fifty-two point eight six BVAP?	1	Review.
2	A. I don't know specifically about that. You're	2	Q. That's right. Do you remember when that was?
3	talking about Prong 1 districts?	3	A. No, I don't remember the date of the article.
4	Q. I'm just asking have you been involved in a	4	Q. I'm going to give it to you then.
5	case where the proposal was for a single-member	5	A. Okay.
6	district to have fifty-two point eight percent BVAP?	6	Q. I won't I won't expect you to remember by
7	MS. EBENSTEIN: Could you clarify? What you	7	memory what you said in that report.
8	do you mean by the proposal? I think that's what he's	8	(Defendant's Exhibit K was marked for
9	asking.	9	identification.)
10	MS. ORMSBY: Oh, sure.	10	Q. (By Ms. Ormsby) All right. Can you tell me
11	Q. (By Ms. Ormsby) One of the illustrative	11	when it was published now by looking at it when it was
12	plans.	12	dated?
13	A. Okay.	13	A. This says 2010.
14	Q. Provided by the obviously not you but	14	Q. Could you look at page 101, as they're
15	another Plaintiffs' expert.	15	numbered on these pages obviously.
16	A. Well, I've provided some too.	16	A. I'm there.
17	Q. Okay. Well, good. That helps.	17	Q. Okay. About halfway down the first paragraph
18	Have you ever been involved where the proposal was	18	under Minority Electoral Opportunities, there's a
19	for a district with fifty-two point eight percent?	19	sentence that starts: There are numerous variations in
20	A. Okay. You are confusing me with proposal.	20	how at-large districts.
21	Q. Okay.	21	Are you there?
22	A. Because certainly there have been in terms of	22	A. At-large elections.
23	Prong 1 illustrative districts.	23	Q. I'm sorry. I looked away too fast.
24	Q. Uh-huh.	24	Could you read that sentence to the end of the
25	A. I don't remember the exact numbers but there	25	paragraph, please?
	Page 98		Page 100
1	have been some that were not far above fifty percent in	1	A. From there to the end of the paragraph?
2	voting age population or maybe even CVAP.	2	Q. Yes.
3	Q. Okay. How about fifty-one point five percent	3	A. Okay.
4	BVAP?	4	There are numerous variations in how at-large
5	A. Well, like I said, it's pretty close. And	5	elections are implemented but comma, but regardless
6	that's what I said, I've been in some in which the	6	of the particular arrangement, this system does have a
7	illustrative district was just a little above fifty	7	tendency to favor candidates preferred by a majority
8	percent.	8	group or at least the largest group of voters within
9	Q. Do you remember how much over fifty percent	9	the jurisdiction.
10	that was?	10	Q. Go ahead.
11	A. No, I don't.	11	A. More?
12	Q. Okay. Would you consider fifty-one point five	12	Q. Yeah, the last sentence.
13	percent a little bit over fifty percent?	13	It provides?
14	A. Yes.	14	A. Oh.
15 16	Q. Okay. Did you author an article entitled	15 16	It provides the largest group of voters an
17	Cumulative and Limited Voting: Minority Electronical Electorial Electoral Opportunities	17	opportunity to determine the winners of all of the seats.
18	and More?	18	
19	Let me say that again. I really messed that up.	19	 Q. Okay. So when you say that the system tends to favor candidates preferred by the majority group,
20	A. And that's one of my easier titles.	20	how do you define the majority group?
21	Q. It's late. Let me try it again.	21	A. The one that has the most well, majority
22	Cumulative and Limited Voting, colon, Minority	22	group at that point let's see. Let me find where
23	Electoral Opportunities and More, question mark,	23	that is. I believe majority group in that context
24	unquote. Did you author that?	24	refers to the nonminority group voters. I think
25	A. Yes, in the Saint Louis University Public Law	25	majority is referring to a not a quantitative thing
l -~		-	. J J

Page 101 Page 103 but a status kind of thing. say the largest group of voters. 1 1 2 Q. So you're not using majority group to mean the 2 Q. Okay. That doesn't change the fact that in 3 group that has more than fifty percent of the voting 3 this case we've already established through another age population? And population, not voting age 4 expert's numbers that African Americans, blacks, have a 4 5 population, but of the overall population? plurality or the largest group of voters; is that 5 6 A. Let me look at the -- well, it probably does 6 correct? A. I don't know if that's been determined. 7 refer to a quantitative. It's a quantitative 7 8 8 Q. That that's what we looked at -determination. Q. So over fifty percent? The population that is 9 A. -- That's the figure you gave me. 9 over fifty percent? 10 10 Q. And if those figures are correct, if I'm not 11 misrepresenting those numbers, we've already 11 A. Yes. Q. Okay. And when you say that this system -established that that -- it would be -- the single race 12 12 13 A. -- And may I say? 13 black BVAP is higher than the single race white VAP, 14 Q. Uh-huh. correct? 14 15 A. Might be referring to not just population but 15 A. According to these numbers. voting age population. 16 Q. Which would mean that the minority has a 16 Q. And so what do you -- what do you -- when you 17 plurality? 17 A. Of VAP. 18 say the system tends to favor candidates preferred by 18 19 the largest group of voters as opposed to the majority 19 Q. Of VAP. Correct? 20 A. Correct. Not necessarily of voters but of of voters, what do you mean? 20 21 A. That would -- I would think I'm referring 21 22 there to a plurality group. 22 Q. And how do you determine the largest number of 23 Q. Okay. So this system when we're talking about 23 the majority of actual voters? 24 at-large elections tends to favor a group that makes 24 A. Well, you do estimates. If you can't -- there 25 up, say, forty-nine percent of the electorate as 25 are few jurisdictions -- a few places where they Page 102 Page 104 1 opposed to a group that makes up forty-eight percent of 1 actually give you the precise number. You don't have 2 the electorate; is that right? 2 to estimate it. Otherwise you have to estimate it. 3 A. Well, I say here at least the largest group of 3 And generally that now would be done through King's 4 voters --4 methodology. Q. And can you --5 Q. Okay. So in this article you're stating that 5 6 A. -- within the jurisdiction. 6 the system tends to favor a group that makes up, say, And then I say: It provides the largest group of forty-nine percent of the electorate as opposed to a 7 8 voters an opportunity to determine the winners of all 8 group that makes up forty-eight percent of the 9 9 the seats. electorate? 10 So it's actually referring to voters. 10 A. By electorate are you referring to people who Q. If you read further up in that paragraph, you 11 11 actually vote? 12 Q. Uh-huh. Well, you tell me. Would that? 12 say that it -- you talk about communities and 13 jurisdictions with small populations, don't you? 13 A. Well, in that context the electorate may 14 A. In that paragraph? 14 change from election to election. Q. In the same paragraph. 15 Q. Okay. 15 A. In terms of voter turnout. And even in terms 16 A. Okay. Let's see. That's what I say, yeah. 16 17 Q. And nowhere in this paragraph do you refer to 17 of what's sometimes referred to as roll-on. voting age population, you specifically just say 18 Q. R-O-L-L dash O-N? 18 19 populations; isn't that right? 19 A. That works, yes. 20 A. Small populations, yes. I'm just referring to 20 Q. Okay. And what does that -- what does that 21 the jurisdiction 21 mean? 22 Q. So in that same paragraph when you refer to 22 A. That means you come, you receive the ballot, 23 the largest group, wouldn't you still be referring to 23 and you actually voted in a -- you rolled-on to vote in a particular election. 24 the population? 24 25 A. No. Because when I say the largest group, I 25 Q. Okay.

Page 105 Page 107 A. Could be all of them. Could be one. So 1 you mean that the forty-nine percent has an opportunity 1 2 sometimes, and especially in local government, roll-on 2 to elect one hundred percent of the candidates if the 3 may differ in that, here we go, one group may roll-off 3 forty-nine percent is the largest -- is the plurality 4 more than another. of any specific group that votes that day; would that 4 5 Q. Okay. be true? 5 6 A. Well, that's more common. But roll-off is 6 A. In other words, you're saying forty-eight when you show up and, like in the election at issue, point nine is not now VAP but actual turnout on the 7 7 election? 8 you may not vote. 8 Q. Even though you show up and take a ballot? 9 9 Q. Uh-huh. 10 A. Correct. 10 A. Well, if there's opportunity to win 11 Q. And you turn in a ballot with no votes on it? 11 theoretically. 12 That would be roll-off? 12 Q. Okay. 13 A. Well, you could -- well, roll-off refers to 13 A. But racially polarized voting can affect that 14 specific offices on the ballot. 14 as well 15 O. So --15 Q. Going to refer you to what's been marked as A. It could cover all of them. If somebody got a Exhibit A. And I just want you to look at the 16 16 ballot and didn't vote for any candidate on the ballot, 17 illustrative plans that have been proposed by 17 18 then I guess you would say they rolled-off all of the Dr. Cooper. The first one is on page -- Figure 10, 18 19 19 page 23. 20 Q. But if I voted for just one contest and not 20 A. These are just statistical summaries. 21 another, that would be considered roll-off as well? 21 Q. This is his Illustrative Plan No. 1. 22 I'm just trying to get the definition down. 22 A. Okay. But there's not a map on this page. A. No. Well, it would be -- if you voted for 23 23 It's just the --24 the -- one of the contests you voted for you would --24 Q. Just the.... 25 that would be, you know, you voted in that election. 25 A. -- just the statistics. Okay. Page 106 Page 108 The other one could be roll-off if you -- then if you 1 Q. And you can see that District 7 -- or no, 1 2 didn't vote in that election, you rolled-off that 2 District -- yeah, District 7 has a fifty-two point 3 contest, that part of the ballot. 3 eight six BVAP; do you see that? 4 Q. So a popular example in my area -- I want to 4 A. Yes, I do. Q. Okay. Do you believe that a district with 5 make sure. So a lot of people are -- judges are 5 reelected after they're appointed and you'll have 6 fifty-two point eight five percent BVAP is an effective 6 7 7 single-member district? a long list of judges that you vote, you know, yes or 8 no on. Literally it's yes or no. 8 A. I don't have an opinion one way or the other 9 9 'cause I haven't studied this particular district. A. So they're approved after --10 10 Q. So we deposed Mr. Cooper yesterday and he said Q. -- Retained or -he would defer to you in these -- to answer that 11 A. -- Retained. Okay. 11 12 question. So you're telling me you have no opinion; is Q. Okay. And so a lot of people, because they 12 13 don't know anything about the judges, they just don't 13 that right? A. I'm telling you all I have here is one figure, 14 vote on those at all but they vote on everything else 14 on the ballot. Would that be an example of roll-off? fifty-two point eight six percent. Nothing else. 15 15 16 A. Sure, on the judicial contests. 16 Q. Uh-huh. 17 Q. Okay. All right. I got it. 17 A. It does identify it as voting age population. 18 A. And turnout can be -- it can be used for 18 O. It's --19 election day turnout, getting a ballot. It can be used 19 A. I don't know anything about the past electoral 20 for turnout on specific offices. 20 history in the geographical area of District 7. I'll try and keep my hand down. My wife complains Haven't looked at this. I don't know what kind of 21 21 22 about that all the time. 22 differences there may be socioeconomically and other 23 Q. So when you say in this article that the 23 things, but for the -- between the African Americans 24 system provides the largest group of voters an 24 and the non-African Americans in the district. 25 opportunity to determine the winners of all the seats, 25 Viability can depend on size of the black

	Page 109	Page 111
1	population but it can also be affected by what kinds of	1 black districts in a single-member district plan for
2	whites are in there, what their turnout tendencies are,	2 the school district.
3	and what their candidate preferences tend to be.	3 Q. And my question, so there's you haven't
4	Q. And is that something that you would have	4 been asked to analyze and Mr. Cooper says he wasn't
5	expected Mr. Cooper to analyze?	5 asked to analyze whether or not those four districts
6	A. I don't know what Mr. Cooper was addressing.	6 were effective or not; is that you haven't been
7	Did he write about effective districts?	7 asked?
8	Q. He I'm asking is that something that you	8 A. I haven't been asked to analyze that. I can't
9	would you don't analyze that? You would expect some	9 speak for Mr. Cooper.
10	other expert to analyze those things that you just	10 Q. Okay. Plaintiffs in VRA cases typically try
11	listed?	11 to assess things like turnout differential between
12	A. Well, all I know is I have not analyzed	12 racial groups in specific neighborhoods in order to
13	districting plans. I haven't assessed proposed, not	13 assess whether specific districts are effective for
14	proposed, illustrative districts for viability or	14 African Americans. And you did not conduct that sort
15	effectiveness or anything like that.	15 of analysis; is that correct?
16	And so for me to sit here and look at one	16 A. I did not
17	percentage figure and say whether that's an effective	17 MS. EBENSTEIN: Sorry. Objection. You're
18	district is too much to ask of me. I don't have the	18 asking him about what plaintiffs normally do in all
19	information I need.	19 cases?
20	Q. Would you have an opinion as to what sort of	20 MS. ORMSBY: In all cases. Generally
21	turnout rate would be required to produce a result	21 plaintiffs in the cases we've read have assessed things
22	the results assumed by Mr. Cooper in those in that	22 like turnout differential.
23	illustrative plan?	23 MS. EBENSTEIN: Beyond the scope of his
24	A. Well, I don't know what result Mr. Cooper	24 knowledge of plaintiffs in cases that you've read.
25	assumed. So I can't.	25 Q. (By Ms. Ormsby) Did you conduct any sort of
	Page 110	Page 112
1	Page 110 Q. Well	Page 112 1 analysis with regard to turnout differential in
1 2	•	
	Q. Well	1 analysis with regard to turnout differential in
2	Q. Well A. Either let me know or I can't answer the	1 analysis with regard to turnout differential in 2 specific neighborhoods between racial groups?
2	Q. Well A. Either let me know or I can't answer the question.	1 analysis with regard to turnout differential in 2 specific neighborhoods between racial groups? 3 A. No.
2 3 4	 Q. Well A. Either let me know or I can't answer the question. Q. Isn't the goal of the illustrative plan in 	analysis with regard to turnout differential in specific neighborhoods between racial groups? A. No. Q. Is it your belief that looking at BVAP is sufficient to determine whether or not a group a district is effective?
2 3 4 5	 Q. Well A. Either let me know or I can't answer the question. Q. Isn't the goal of the illustrative plan in this case to create four single-member districts that 	analysis with regard to turnout differential in specific neighborhoods between racial groups? A. No. Q. Is it your belief that looking at BVAP is sufficient to determine whether or not a group a
2 3 4 5 6	 Q. Well A. Either let me know or I can't answer the question. Q. Isn't the goal of the illustrative plan in this case to create four single-member districts that could elect African-American candidates? 	analysis with regard to turnout differential in specific neighborhoods between racial groups? A. No. Q. Is it your belief that looking at BVAP is sufficient to determine whether or not a group a district is effective?
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2 3 4 5 6 7 8	 Q. Well A. Either let me know or I can't answer the question. Q. Isn't the goal of the illustrative plan in this case to create four single-member districts that could elect African-American candidates? A. I notice that there are four majority African American and VAP districts. The extent to which that 	analysis with regard to turnout differential in specific neighborhoods between racial groups? A. No. Q. Is it your belief that looking at BVAP is sufficient to determine whether or not a group a district is effective? A. It well, I would you repeat it? Q. Uh-huh. Do you believe that it's sufficient to only look at BVAP to determine whether or not a district is an
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Page 113 Page 115 point eight percent; is that right? to do that analysis? 1 1 2 A. Correct. 2 A. We are talking about the analysis of -- well, 3 Q. Okay. If it was determined that the 3 I usually refer to viable. Some people use the Ferguson-Florissant School District as a whole had an 4 expression -- the adjective effective. That's what 4 5 AP BVAP of around fifty-one percent, if that were the you're --5 6 6 Q. -- No, no, no. 7 A. AP? 7 A. Okay. 8 Q. Uh-huh. 8 Q. I want to know if you've ever been asked to do AP BVAP of fifty-one percent. 9 a turnout -- voter turnout analysis regarding one 9 election date versus another in any case that you've 10 A. What does AP mean? 10 11 Q. Any part black --11 been an expert in. A. I don't recall doing an analysis of that. 12 A. Okay. 12 13 Q. -- voting age population. 13 Q. Can you -- I'm going to change gears now. A. Of what percent? 14 14 Okav? 15 Q. Fifty-one percent. 15 A. Okay. A. Uh-huh. 16 Q. Just a little heads up. 16 Q. Would you conclude -- could you conclude 17 Can you tell me what -- what is a majority vote 17 18 whether or not that would be an effective district? 18 requirement? 19 A. And for what purpose is this district offered? 19 A. A majority vote requirement is a requirement 20 Q. As a district as a whole. If the district as 20 that in order to be elected a candidate must receive a 21 a whole is determined to have an AP BVAP of fifty-one 21 majority of the votes cast in the decisive election. 22 percent, would that be -- could that be an effective 22 Q. And does the Ferguson-Florissant system 23 district? 23 require that? 24 A. Well, it could be. It's an effective district 24 A. Not to my knowledge. 25 in terms of what it takes to satisfy Prong 1. Now, is 25 Q. And do you believe that a majority vote Page 114 Page 116 it an effective district in terms that somebody can say 1 requirement tends to help or harm African-American 1 2 there was the probability of electing of that -- a 2 candidates? 3 minority-preferred minority candidate, if that's their 3 A. Depends whether they're the majority or not. 4 preference, that would require some analysis. 4 Q. Generally does it help or hurt? A. I would say empirically it tends to hurt 5 Q. But you have not been requested to conduct any 5 6 of that analysis as it relates to Illustrative Plans 1 6 because most jurisdictions are not majority African 7 and 2, or to that scenario where the entire district 7 American 8 is? 8 Q. All right. And what is bullet voting? 9 9 A. Bullet voting is a synonym for single-shot A. That is correct. 10 Q. Okay. Did you analyze whether blacks and 10 voting. But more specifically can be used to express whites turned out at the same or different rates in the fact that voters vote for only one candidate. 11 11 12 April elections? That's also the literal definition of single-shot 12 13 A. No 13 voting but some people will expand that. They may try Q. Did you analyze voter turnout for any election 14 14 to vote for two candidates --Q. So -not held in April? 15 15 16 A. No 16 A. -- that they prefer. 17 Q. So in this case the Plaintiffs want the court 17 Q. So if there's two spots -- if there's two --18 18 they're going to elect two candidates. If there to change the date of the election presuming -- from 19 April to some other date. They don't state what month. 19 were -- you could vote for two people. You could vote 20 But you didn't analyze anything to do with that; is 20 for two people and you only vote for one, that would be that right? 21 21 bullet voting? 22 A. That's correct. 22 A. Yes. 23 Q. And that's because you weren't asked to? 23 Q. And if there were three candidates up for 24 24 election, bullet voting could be voting for one or two 25 Q. Okay. Have you been asked to in other cases 25 candidates when you really can vote for three if you

	Page 117		Page 119
1	wanted to; is that what you're saying?	1	minority group votes, it's also a matter of how the
2	A. Well, bullet voting and single-shot voting are	2	rest of the electorate votes. If the rest of the
3	synonymous.	3	electorate can, if they're the majority, can certainly
4	Q. Uh-huh.	4	preclude the election of minority candidates by casting
5	A. But there are times when certainly single-shot	5	their votes only for the number of candidates there are
6	voting people might talk about a situation where the	6	seats to award.
7	presence of the minority group at issue	7	Q. Say that last part again for me, please. I'm
8	Q. Uh-huh.	8	sorry.
9	A is large enough and other statistics	9	A. Okay. Yes. Single-shot voting doesn't work
10	indicate that they have the electoral strength to elect	10	unless the other group we'll call it the white
11	two candidates. And so, therefore, there's the	11	group disperses their votes over more candidates
12	question of coordinating or, you know, how they	12	than there are seats to be elected.
13	allocate their votes across two, say two minority	13	Q. Okay.
14	candidates that they prefer.	14	A. You know, that can prevent the election of a
15	Q. If it were a three-candidate election or, you	15	minority candidate. So it's not just how the minority
16	know, you could elect three people and there were two	16	behaves, it also depends on how the rest of the
17	African Americans running and the rest were white, one,	17	electorate behaves.
18	two, three, four, you know, more than two let's say	18	Q. But in my previous example where there's three
19	there's two whites and two blacks or more whites. I	19	seats up for election, two African Americans and the
20	don't care. And if the African Americans all went and	20	rest of the candidates are white, and African Americans
21	voted for just the two African-American candidates,	21	cast more votes than the whites, if those if the
22	that's permitted under the Ferguson-Florissant system;	22	African Americans would go in and vote give their
23	is that right?	23	votes only to the two African-American candidates,
24	A. To my knowledge, it is.	24	those candidates are going to get elected, right?
25	Q. Does bullet does the research indicate that	25	A. I think the way you expressed it it's a
	Page 118		Page 120
1	bullet voting tends to help or harm African-American		1480 120
	bullet voting terius to neip or narm Amcan-American		mathematical cortainty
2	•	1	mathematical certainty.
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3	candidates? A. That can be quite context specific. I mean,	2	Q. Thank you. You've already acknowledged that Courtney Graves
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. That can be quite context specific. I mean, by bullet voting you can if you just like in a single-member district, if there were more than one minority candidate that they preferred and, you know, if they split their vote with the one-vote rule, I mean, if they divide between those two candidates, they may result in those two candidates losing. That can happen. The system doesn't preclude that. And the same thing with single-shot voting. I mean, there could be context probably where there might be too much dispersion of the vote across their own candidates and even though they were the majority they could lose. Q. But we agree that if in an election, as we've seen in a couple of the elections here, there were more African-American votes cast than white votes cast. A. I don't know that. Q. Let's say that's the case. A. Okay. Well, let me also can I add to my	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Thank you. You've already acknowledged that Courtney Graves encouraged bullet voting in her election; is that right? A. I believe what I said is that Professor Rodden claims that she did. Q. Okay. A. And even provided or at least a link to some I believe their Facebook pages, in which it's clear in those that she was asking voters to cast just one vote and that for her. Q. Did you look at those Facebook pages? A. I looked at the links that he provided, yes. Q. And is that what she was doing, is asking A Well, yes. I'm sorry. Go ahead. Are you done? Q. Was she asking voters to just vote for her, to bullet vote for those? A. In those Facebook postings, yes. Q. Okay.
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. That can be quite context specific. I mean, by bullet voting you can if you just like in a single-member district, if there were more than one minority candidate that they preferred and, you know, if they split their vote with the one-vote rule, I mean, if they divide between those two candidates, they may result in those two candidates losing. That can happen. The system doesn't preclude that. And the same thing with single-shot voting. I mean, there could be context probably where there might be too much dispersion of the vote across their own candidates and even though they were the majority they could lose. Q. But we agree that if in an election, as we've seen in a couple of the elections here, there were more African-American votes cast than white votes cast. A. I don't know that. Q. Let's say that's the case. A. Okay. Well, let me also can I add to my last answer? Q. Sure. Uh-huh.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. Thank you. You've already acknowledged that Courtney Graves encouraged bullet voting in her election; is that right? A. I believe what I said is that Professor Rodden claims that she did. Q. Okay. A. And even provided or at least a link to some I believe their Facebook pages, in which it's clear in those that she was asking voters to cast just one vote and that for her. Q. Did you look at those Facebook pages? A. I looked at the links that he provided, yes. Q. And is that what she was doing, is asking A Well, yes. I'm sorry. Go ahead. Are you done? Q. Was she asking voters to just vote for her, to bullet vote for those? A. In those Facebook postings, yes. Q. Okay. A. I have no idea how more extensively that happened.

Page 121 Page 123 Q. And in this study what happened to cities that ninety-one votes, could he have asked people to bullet 1 1 2 vote for him? There's nothing in the rules that said 2 had populations -- minority population over fifty 3 he couldn't; is that right? 3 percent; do you remember? 4 A. Well, if there's nothing in the rules that 4 I think it's on page 1093. At the bottom of the 5 said he couldn't, then there's nothing to say he 5 paragraph before the footnote. 6 couldn't 6 A. Before the footnote. What I'm looking for Q. Okay. 7 here is a statement of what the criteria for being in 7 8 8 the sample would be. I'm not aware that there are A. He would be permitted to do that. cities above fifty percent in this study. 9 Q. Okay. 9 10 (Defendant's Exhibit L was marked for 10 Q. You eliminated them, didn't you? You 11 identification.) 11 eliminated the cities with over fifty percent Q. (By Ms. Ormsby) All right. I've handed you 12 12 population? 13 Exhibit J. It's an article --13 A. I don't know if we eliminated them or they A. Exhibit what? 14 14 weren't in the sample. 15 Q. I'm sorry. Exhibit L. 15 Q. Could you on page 1093 read the last sentence 16 A. I have that. 16 which goes over into the next page. Starts with: Due 17 Q. Okay. And it's an article entitled "The 17 to data on black median income. 18 Underrepresentation of Blacks in City Councils," 18 A. Okay. 19 correct? 19 Q. Says: Due to data on black median income not A. Correct. 20 20 being reported for fifteen cities, all of which have 21 Q. And you authored this article? 21 less than one percent black population, and our 22 A. Coauthored it, yes. 22 decision to eliminate the four central cities in which 23 Q. And it was published in The Journal of 23 blacks constitute a majority of the population, 24 Politics in 1982; is that correct? 24 parentheses, the theoretical specification assumes 25 A. I'd have to check on -- yes, 1982, and it is 25 minority status, end quote. Page 122 Page 124 The Journal of Politics. 1 The following analysis is based on central cities 1 2 Q. Okay. One of your findings in this paper is 2 in two twenty-four SMSAs. 3 that at-large districts are bad for minority 3 Is that what it says? 4 representation; is that correct? I know it's been a 4 A. You read that correctly. 5 while so do you remember coming to that conclusion? 5 Q. Thank you. 6 A. Well, I certainly -- that at-large -- I think 6 So you eliminated those cities over fifty percent? 7 in this paper we would have concluded that at-large 7 A. Those four, yes. For theoretical reasons. 8 elections tend to dilute minority votes. 8 Q. What does it mean theoretical specification 9 Q. Okay. Do you recall how you measured the 9 assumes minority status? What does that mean? 10 black population percentage in each city in this 10 A. Well, that at-large elections tend to dilute 11 paper? 11 the votes of minorities. 12 12 A. Black percent of population. Q. But that parentheses is right under -- right 13 Q. Overall population, correct? 13 after the phrase that you: Our decision to eliminate 14 A. Yes, it would be. 14 the four central cities in which blacks constitute a 15 Q. And you got those figures from the census; is 15 majority of the population, parentheses, the 16 that right? 16 theoretical specification assumes minority status, end 17 A. I believe that would be the case at this point 17 in time 18 18 What does that mean all together? 19 Q. Does this paper conclude that at-large 19 A. That means that -- the theory behind this is 20 districts are bad when the minority population is under 20 the impact of at-large elections on minority groups 21 that are also quantitative minorities. 21 fifty percent? 22 A. The variable here is black percent of 22 Q. So if the population is over fifty percent 23 population so the conclusions would be based if they 23 African American, then that would not fit your criteria 24 start -- if the conclusions refer to specific relative 24 for the study? 25 presence figures, they would be for a total population. 25 A. That would be the case.

Page 125 Page 127 victories over the last fifteen years, can it be Q. Okay. So this paper really doesn't tell us 1 1 2 anything about districts with minority populations that 2 explained -- what can you -- well, how do you explain 3 exceed fifty percent; would you agree with that? 3 that? How do you explain the African-American 4 A. Let's see. Does it -- is this -- okay. And 4 candidates elected to the school board in the last 5 your question was? 5 fifteen years? Were there special circumstances 6 Q. That this study doesn't tell us any -- this 6 involved or? 7 paper doesn't tell us anything about districts or 7 A. I don't know what was involved. I'm not 8 communities with a minority population that exceeds 8 interested in what are often referred to as stale 9 9 elections. So we're in 2015. I'm not interested in 10 A. Well, this doesn't say anything about 10 elections that go back fifteen years and I don't districts exceeding fifty percent or not. 11 11 analyze them. They're not in my report. Q. All right. Thanks. Q. But it is your belief that all of the African 12 12 13 A. I mean, these are -- the data here concerned 13 Americans elected in the last five years were elected 14 cities, not districts. due to special circumstances? 14 Q. Okay. Any -- this paper doesn't have anything 15 15 A. No, I didn't say that for the 2014 election. 16 to do with any city, municipality, school district, any 16 Q. But you did say for the 2014 election, didn't 17 governing body and their constituents with a minority 17 you, that two of the preferred candidates did not get population over fifty percent; would you agree with 18 18 elected, correct? 19 19 A. Yes. 20 A. That's correct. 20 O. So in 2013 if Mr. Henson had received an 21 Q. Okay. Do you dispute -- and I'm changing 21 additional one hundred and twenty-six votes, he would 22 gears. 22 be serving on the board today; do you agree with that? 23 Do you dispute the fact that for thirteen of the 23 A. 2013. Okay. 24 years since 2000, the Ferguson-Florissant School Board 24 Q. Uh-huh. 25 had one or two African-American members? 25 A. If the only change in the behavior of the Page 126 Page 128 1 A. I'd have to review the data again. voters is to give Mr. Henson a hundred and twenty-six 2 2 Q. And your central claim seems to be that due to more votes? 3 white block voting, African Americans cannot elect 3 Q. Uh-huh. 4 preferred candidate -- preferred candidates absent 4 A. Then -- and I believe what you have 5 special circumstances; am I saying that correctly? 5 represented is that would mean more total votes than A. Could you say it once more? 6 Brown? 6 7 Q. Correct. 7 8 Due to white block voting, African Americans 8 A. Okay. Yes. 9 9 Q. And in 2014 if Mr. Savala had received an cannot elect preferred candidates absent special 10 10 additional ninety-one votes under the same scenario, he circumstances; is that correct? 11 A. That would be the history of the elections I 11 would be on the board today; isn't that right? 12 analyzed. 12 A. Another ninety-one? 13 Q. So that's your opinion? 13 Q. Uh-huh. 14 A. Say it again. I'm sorry. 14 A. That's the only change that occurred. If 15 Q. Sure. somebody just stuck ninety-one more votes into the 15 16 A. I must be getting tired. 16 ballot box for him, given what you are representing, 17 Q. I want you to get it right. 17 then he would be on the board. 18 Q. So if a total of two hundred and seventeen A. Go ahead. 18 19 Q. It's your opinion that due to white block 19 votes had gone differently in those two elections, 20 voting, African Americans cannot elect preferred 20 that's one twenty-six plus ninety-one, the board would candidates absent special circumstances. I would say 21 currently have four African Americans serving? 21 22 due to white block voting they don't have an 22 MS. EBENSTEIN: I'm sorry. Could you explain 23 opportunity equal to that of other members of the 23 that to him differently? MS. ORMSBY: According to my previous two 24 electorate? 24 25 Q. Okay. So is your claim that all of the black 25 questions where if it had gone -- if they had received

Page 129 Page 131 those votes like we just discussed, then they would be Q. I'm going to represent to you that it's --1 1 2 on the board. He already said that. 2 it's just numbers from the Election Authority. It was 3 Q. (By Ms. Ormsby) So I'm just verifying there 3 two hundred and seventeen votes total that they -would be four members on the board if they had been 4 4 5 elected? 5 But what I'm confused by and what I'm trying to 6 A. And one of these votes was Henson and the 6 figure out how to put this articulately is, isn't your 7 other was? 7 theory that whites somehow thwarted or blocked the 8 Q. Savala. 8 African-American candidates from being elected also A. Savala. Okay. Yes, if the voters had voted 9 just a guess? Isn't it just -- how do you prove that 9 differently, there would be four. The outcome would 10 10 that's what caused it and it wasn't something else? 11 have been different. 11 A. It's really quite straightforward mathematics. Q. And you don't dispute that the census All right? In 2011 they would have won -- the two 12 12 13 calculations, which I know you haven't done but other 13 black candidates would have won if only the black votes 14 Plaintiffs' experts have, indicate that African 14 were counted. 15 Americans do not -- do not constitute a majority of the 15 If you go to the white vote though, they lose. 16 VAP? You don't know? I know your answer to that 16 And they lose enough to cancel the support in the black

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already but I'll let you answer. A. Well, I did read Dr. Rodden's report.

19 Q. Uh-huh.

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18

- A. And I believe, as I recall, the data he 20
- 21 provided showed that as of the last time data were
- 22 available there was a larger white VAP than black, I
- 23 believe. I think it was only an extrapolation line out
- 24 later that was the basis for his conclusion, I believe,
- 25 that it's now a majority African-American VAP.

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- 1 Q. I think that there's a plurality. I don't want to put testimony in -- I don't want to -- I'm 2 3 going to just leave it. Okay?
- 4 A. Okay.
- 5 Q. I don't want you to speculate and I don't want
- 6 to put testimony into the record so we'll just leave
- 7 it.
- 8 Do you have a technique for demonstrating that 9 those two hundred and seventeen votes went the way they
- 10 did because of white block voting rather than simple
- bad luck or ineffectual campaigning? 11
- 12 A. What happened to those two hundred and 13 seventeen votes? I'm not aware they ever existed.
- 14 It's a hypothetical. You've changed the fact basis,
- 15 alleged fact basis. I mean, you're giving me a
- 16 hypothetical if this happened in 2013, then if this
- 17 happened in 2014, it would have been different. I
- 18 can't tell you what happened to two hundred and
- 19 seventeen votes that never existed. What happened was
- 20 they didn't exist and Mr. Henson and Mr. Savala lost.
 - Q. Do we agree though that those two candidates
- 22 lost by a total of two hundred and seventeen votes? A. I did not do that calculation. So I'm taking
- 24 your word for it in my answers. I think I made that
- 25

21

23

1 the differences.

O. But if --

- 2 O. But we --
- 3 A. So I don't think that's hypothetical.

Q. But couldn't it --

- 4 Q. But we agreed that -- or according to your
- numbers only forty-five percent -- forty-five point six 5

voters. That's what is called submission. I mean --

A. -- at-large elections, not submission. What

am I -- submergence. They get submerged in a larger

white vote and as a result they lose. That happened in

2011. That happened in 2012. That happened in 2013.

A. And did not happen in 2014 and 2015 is a

serious question given its postlitigation status and

- 6 percent of African Americans voted for the two
- 7 African-American candidates?
 - A. No, you're wrong.
- 9 Q. I'm wrong?
- 10 A. Only -- we're talking in 2011, was that it?
- 11 Q. Yes.
- 12 A. Okay. Which one are you counting?
- 13 Q. Graham and Hawkins, the two African-American 14 candidates. The percent of African-American votes that
- the two of them together got was forty-five point six. 15 16
- A. Yes. The percent of African-American voters 17 who voted for them would be higher probably. So you
- referred to it as African-American voters. You have to 18
- 19 be clear.

20

23

- Q. African-American votes. Okay.
- 21 A. Votes cast by African Americans.
- 22 Q. I will -- I will concede that point.
 - A. All right. And some of these people may also
- have voted, they may have used a third vote. 24
- 25 Q. Can I finish my question?

Page 133 Page 135 A. Yes, you may now. 1 A. Well, I don't know about just some. But 1 2 Q. Thank you. 2 certainly there's a number of votes that could be added 3 Fifty-four point four percent, is that right? I 3 to their total and they would then win a seat. checked my math. But over fifty percent of African 4 Q. So it's not necessarily --4 5 Americans cast a vote for a white candidate; do you 5 A. I'm not done. All right? 6 agree with that? They cast their vote for either 6 But we're going through the same thing over and 7 Martinez or Morris or Chabot or Ebert or Clark or Lentz 7 over. And I'm saying these -- what you're presenting 8 or Hosea. They cast their vote for one of those. They 8 are hypotheticals. If it would have been different, 9 gave a vote to a white candidate; do you agree with 9 the outcome could have been different. that? 10 10 I'm dealing with reality. I'm dealing not the way 11 A. Actually, I -- oh, we don't know how many of 11 voters could have voted, but the way voters did vote those that voted gave a vote. What we know based on when they went into the polls and voted in these 12 12 13 the estimates is only thirteen point five percent of 13 city -- in these school board elections. 14 them voted for either Graham or Hawkins. Q. But the VRA only requires that African 14 Q. I'm talking about African-American voters now. 15 15 Americans, or whatever the minority is, have the 16 I'm not talking about --16 opportunity -- are not denied the opportunity to elect 17 A. I thought you said white. 17 their chosen candidate; do you agree with that? Q. No. I'm saying that fifty -- fifty -- what is 18 18 A. Right. But one of the context in which you 19 it? Fifty-four point four percent of African-American 19 assess that is Prong 3. votes did not go to either Graham or Hawkins and rather 20 20 Q. But there are other -- but there's nothing in 21 went to one of the white candidates; is that correct? 21 any of these elections that would prevent the African 22 MS. EBENSTEIN: I'm sorry. Which page are you 22 American from being elected. They could have gotten 23 on? 23 elected. They could have gotten elected even if the 24 MS. ORMSBY: I'm on page 17. 24 whites voted exactly the way they did, just if they 25 MS. EBENSTEIN: And fifty-four -- just so I 25 changed their vote -- if African Americans changed Page 134 Page 136 can follow it, fifty-four point four percent? 1 their voting pattern; do you agree with that? 1 2 MS. ORMSBY: One hundred minus forty-five 2 A. Well, and whites would could change theirs. 3 point six is --3 That's not the way it happened. Your expert's numbers 4 A. I think you had it right. 4 show the same thing as mine. 5 MS. GABEL: Okay. 5 So what you're asking is, again, if it had been 6 MS. ORMSBY: So twenty-four point one plus 6 different, it could have been different. That doesn't, 7 twenty-one point five is forty-five point six. 7 I don't believe, get us very far in understanding 8 MS. EBENSTEIN: Okay. 8 whether voting is racially polarized. 9 MS. ORMSBY: Right? Of American votes --9 Q. So you just said, quote, because she wrote it 10 African-American votes went to either Graham or down, "African Americans get lost in the larger white 10 11 Hawkins 11 vote." That's what you said. 12 MS. EBENSTEIN: Uh-huh. 12 A. Submerged I believe I said. 13 MS. ORMSBY: That leaves fifty-four point four 13 Q. How do you know if there was a larger white 14 votes -- percent of the votes went to a white 14 vote if you didn't analyze turnout? 15 candidate. 15 MS. EBENSTEIN: Didn't he say that for the 16 MS. EBENSTEIN: Okay. 16 definition of submerge? MS. ORMSBY: Right? That's what I'm talking 17 17 MS. ORMSBY: No, that's just what he said 18 about 18 while he was pontificating. MS. EBENSTEIN: Okay. 19 19 MS. EBENSTEIN: About what? 20 MS. ORMSBY: So are we good? On the same 20 MS. ORMSBY: My question about whether or not 21 21 African Americans could have won by just simply more of page? 22 MS. EBENSTEIN: Yeah. Got it. 22 them voting. It wasn't about -- this is just what he 23 Q. (By Ms. Ormsby) Okay. So if just some of 23 said within the last two minutes, a quote. Not from 24 those African-American votes would have gone to Graham 24 before. 25 or Hawkins, they would have won; isn't that right? 25 MS. EBENSTEIN: Okay.

Page 137 Page 139 1 Q. (By Ms. Ormsby) So if you didn't analyze Q. Okay. 1 2 voter turnout, which you already testified that you did 2 A. There's no question they were not elected. 3 not, how do you know that there was a larger white 3 And there's no question, I don't care whose numbers you vote? 4 look at, that's because they didn't get sufficient 4 5 A. Well, what these numbers are based on are the 5 white votes to be elected. They were vetoed under 6 estimates of those who cast votes. 6 7 Q. Right. 7 Q. But they could have got black votes and gotten 8 A. Not who showed up at the polls. Those who 8 elected. They could have got a few more blacks votes 9 and they would have gotten elected. 9 cast votes. It's a two-stage procedure where you do 10 look at estimates of participation and they then go 10 A. Like I've said all along, it doesn't matter what the source was. It would have been different if 11 into your estimates of candidate preferences. As I 11 they got those additional votes. 12 said, the issue is voters. 12 13 Q. And it doesn't bother you in any way that 13 Q. From whatever source? 14 because of two hundred and seventeen votes that this A. From whatever source. 14 lawsuit has been filed? If two hundred and seventeen 15 15 Q. Okay. 16 votes would have gone differently, we wouldn't be 16 A. But it didn't happen. sitting here today. 17 Q. All right. 17 A. And it's not like the only election we have is 18 MS. EBENSTEIN: Actually you shouldn't. That 18 19 misrepresents the nature of the lawsuit. And your 19 2011. 20 20 Q. Okay. question is does that bother him? 21 MS. ORMSBY: Yes. 21 A. Okay. 22 MS. EBENSTEIN: Okay. 22 Q. Have you been asked to form any opinion on any 23 Q. (By Ms. Ormsby) Does it bother you? 23 subject that is not included already in your two 24 A. Does it bother me? The elections, some of 24 submitted reports? 25 them turned out fairly close. There's a common 25 A. No. Page 138 Page 140 expression in politics, We ain't playing horseshoes. 1 Q. And do you plan or have you been asked as of 1 2 today to do any additional work between now and trial? 2 Close doesn't count. 3 Q. And that doesn't -- if it's close, it 3 A. Prepare for trial but not if you -- by that 4 doesn't -- it doesn't give you pause at all? 4 you mean additional analysis? Q. Uh-huh. 5 A. Well, tell me, did Graham or Hawkins serve 5 6 three years on the school board after this election? 6 A. I have not been asked to do that. 7 7 Q. Okay. A. You know, whether I am is a question of these 8 A. Okay. Did Morris serve three years on the 8 9 school board after this election? 9 people but they have not asked. 10 Q. Which election are you talking about? 10 Q. I'm not asking you to look into the future, 11 A. 2012. Sorry. 11 I'm asking as of today. 12 Q. B. Morris. There's two Morrises. That's why A. All right. 12 13 I asked you. 13 MS. ORMSBY: I don't have any other 14 A. Okay. 14 questions. 15 Q. I didn't know which Morris you were talking MS. EBENSTEIN: Okay. 15 Can we take five minutes. 16 about. 16 A. Is that true? 17 17 (Short break.) 18 Q. Yeah. But I'm not going to answer your CROSS-EXAMINATION 18 19 questions. I get to ask you questions. 19 BY MS. EBENSTEIN: 20 A. Well, I'll say the same thing for 2013. What 20 Q. Dr. Engstrom, we met. My name is Julie 21 happened? Those candidates did not serve on the school 21 Ebenstein. I'm representing the Plaintiffs. We 22 board. And you want to tell me that I should be 22 retained you in this case. I just have a few questions 23 disturbed because if they only got two hundred and 23 to ask you. 24 seventeen more votes two of them wouldn't? I'm not 24 25 disturbed. I look at what happened. 25 Q. About the questions that have already been

Page 141 Page 143 asked by defense counsel. 1 1 A. Yes First, have you ever reviewed Bill Cooper's report 2 2 Q. You were asked a moment ago whether 3 before today? 3 single-shot voting is permitted under the current A. No. I haven't reviewed it today either. 4 system. It is permitted, correct? 4 Q. My next question was did you have the 5 A. Correct. 5 6 opportunity to review the full report or did you note 6 Q. Is single-shot voting required? 7 the pages that defense counsel asked you about? A. No 7 8 8 Q. Have you ever come across a system where A. I believe I looked at pages that I was 9 voters are required to give up their right to cast any 9 requested to look at. number of votes in an election? 10 Q. Have you had a chance to -- did you read or 10 A. No. receive Dr. Kimball's report before today? 11 11 Q. Would you -- would you -- would you say that 12 A. No. 12 13 Q. Okay. In the 2011 election on page 17 of your 13 African-American voters have equal opportunity to elect candidates if -- of their choice if the only way for 14 report, how many African-American candidates are there? 14 them to elect candidates of their choice is to cast 15 15 Q. And how many votes was each voter allowed to 16 fewer votes than white voters? 16 17 A. I would -- I don't think I would call that cast in this election? 17 18 equal, no. 18 A. Three. 19 Q. And could a voter who voted for both of the 19 Q. Okay. You were asked about a deposition that you gave, Exhibit J, in a Northern District of Ohio 20 20 African-American candidates have cast their third 21 case, the Euclid City School Board case, correct? ballot for one of the African-American candidates? 21 22 A. Correct. 22 A. Yes -- no, excuse me. For -- already voted 23 Q. There we go. 23 for those two. 24 And could you turn back to page 26 where defense 24 O. Yes. 25 counsel asked you to read from the deposition record. 25 A. No, they could not add any votes to that. Page 142 Page 144 1 Q. To rephrase my question, could a voter have 1 A. I'm there. 2 voted twice for an African-American candidate? 2 Q. Defense counsel asked to you read your answer: 3 A No 3 My conclusion is based on the fact that the voting age 4 Q. So if a voter wanted --4 population based on the ACS surveys is substantially 5 A. -- For a particular African American? 5 higher than, I would say, than the threshold of Q. Correct. 6 exclusion. 6 7 8 Q. In this particular election could a voter have 8 A That's what it reads q voted twice for one of the two African-American 9 Q. Could you read that next paragraph so that we 10 have your complete answer on the record. 10 candidates? A. The remainder of the answer is: I understand 11 A. No. 11 that African American -- I think that's supposed to be 12 Q. Okay. Does that mean that if a voter wanted 12 13 to cast a third ballot it would necessarily be for a 13 plural -- are politically cohesive judging from the 14 non-African-American candidate? 14 findings in the City case and the stipulations in that A. If an African-American voter wanted to cast a 15 case -- in this case. Sorry. With that as well, that 15 16 third ballot? 16 is the primary basis for it. The numbers of the 17 Q. Yes. 17 potential electorate are there. There's a cushion for 18 A. And they had already voted for Graham and if we are using the 2007 ACS number. 18 19 Hawkins? 19 Q. Do you recall that the parties in this -- you 20 Q. Yes. 20 mentioned earlier that you were only testifying about A. Yeah. The only remaining choices are white. remedies in this case; is that correct? 21 21 22 Q. Or just to phrase it differently. If an 22 A. In the Euclid, yes. Yes, that is correct. 23 African-American voter cast all three votes that 23 Euclid City School District case I was -- well, I have they're entitled to cast, would they by definition have 24 24 to -- I know -- I believe they stipulated that voting 25 to cast at least one for a white candidate? 25 was racially polarized. I know they did that. So

	Page 145		Page 147
1	whether the entire hearing was remedial or I'm I	1	be at a lower level?
2	would have to reread the opinion.	2	And that you
3	Q. Okay.	3	What would that be?
4	A. I mean. But there wasn't any RPB testimony.	4	I don't know.
5	The school district said yes, voting is racially	5	I'll just read it out.
6	polarized here and then they went on.	6	She would have to something with her figures.
7	Q. And the part the answer that you just read	7	And the answer is: The figures themselves, I
8	starting with: Well, my conclusion is based.	8	think, are not going to provide you a reliable thing.
9	Based on that question were you talking about the	9	You don't they don't take you down to that level.
10	voting the threshold of exclusion that you had	10	You can take it down to that level. There's a lot of
11	calculated, one sixty point eight and one twenty point	11	uncertainty at that point.
12	seven?	12	A. That's what that's what the questions were
13	A. Well, I know the this answer of mine refers	13	and my answers.
14	specifically to the threshold of exclusion.	14	Q. Okay. And do I understand that in this case
15	Q. Okay. Not to a determination that you made	15	the data that the data was calculated elsewhere and
16	about the demographics of the voting age population?	16	stipulated to in this case; was that correct? Did the
17	A. It was a comparison of the voting age	17	parties stipulate to certain parts of the data?
18	population and the threshold of exclusion, the	18	A. To certain I know the school board
19	percentages of what both those figures.	19	stipulated to the existence of racially polarized
20	Q. Okay. If you could turn to the next page,	20	voting. Now, if you're referring to other data, I
21	twenty-seven, in that deposition transcript. Towards	21	don't recall.
22	the end the question starts: Based on sample data.	22	Q. Okay. And on page 29. This is the last piece
23	Does that report a confidence interval for the	23	I'd like to look at. One, two, three, four paragraphs
24	estimates used?	24	down. You say: I think I just said I don't know how
25	MS. ORMSBY: Julie, may I just verify that you	25	he derived his estimates. All I know is he took the
	Page 146		Page 148
1		1	
1 2	are one, two, three, four, five.	1 2	ACS numbers, did something with them to provide estimates. The U.S. Government used those estimates in
3	MS. EBENSTEIN: Yeah. MS. ORMSBY: Up from the bottom?	3	this case.
4	MS. EBENSTEIN: Five paragraphs from the	4	
5	• • •		
J	hottom on nage 27		Is it correct that you did not make a calculation
6	bottom on page 27. MS_OPMSRV: Thanks	5	based on ACS estimates but calculated a threshold of
6 7	MS. ORMSBY: Thanks.	5 6	based on ACS estimates but calculated a threshold of exclusion based on data given to you?
7	MS. ORMSBY: Thanks. A. Okay. You're beginning with a question:	5 6 7	based on ACS estimates but calculated a threshold of exclusion based on data given to you? A. I don't recall. Is there an answer in the
7 8	MS. ORMSBY: Thanks. A. Okay. You're beginning with a question: Based on sample data for those three years. It says	5 6 7 8	based on ACS estimates but calculated a threshold of exclusion based on data given to you? A. I don't recall. Is there an answer in the deposition?
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7 8 9 10	MS. ORMSBY: Thanks. A. Okay. You're beginning with a question: Based on sample data for those three years. It says your report should I read it? Q. (By Ms. Ebenstein) Sure.	5 6 7 8 9	based on ACS estimates but calculated a threshold of exclusion based on data given to you? A. I don't recall. Is there an answer in the deposition? Q. There's not a direct answer but those points taken together, I think, are a more complete reading of
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	Page 149		Page 151
1	American African Americans are politically cohesive	1	I, RICHARD ENGSTROM, do hereby state that I have
2	judging from the findings in the City case and the	2	read the foregoing questions and answers in this
3	stipulations in this case. With that as well, that's	3	transcript of my deposition, page 5 through and
4	the primary basis for it.	4	including page 149, and that this is a true and
5	Is it correct that the stipulations were the	5	accurate report of said answers given in response to
6	primary basis on which you are judging the threshold of	6	the questions propounded and appearing herein.
7	exclusion?	7	
8	A. Repeat the question, please.	8	
9	Q. Did your data come from ACS or were you	9	RICHARD ENGSTROM
10	looking at a stipulation? And as you put it: The	10	
11	numbers of the potential electorate are there.	11	
12	A. Well, this refers to stipulations and to ACS.	12	Subscribed and sworn to before me this
13	Not	13	day of, 2015.
14	Q. Okay.	14	
15	A really clear as to which. If there was any	15	NOTARY PUBLIC
16	difference even.	16	
17	MS. EBENSTEIN: Okay. Those are all the	17	My commission expires
18	questions I have. Thank you.	18	
19	MS. ORMSBY: I don't have any further	19	
20	questions.	20	
21		21	
22		22	
23		23	
24		24	
25		25	
	Page 150		Page 152
1	MCGRAW REPORTING, L.L.C.	1	ERRATA SHEET
1 2	MCGRAW REPORTING, L.L.C. Certified Court Reporter 2927 Droste Road	1 2	ERRATA SHEET I do hereby certify that I have read the foregoing
2	MCGRAW REPORTING, L.L.C. Certified Court Reporter 2927 Droste Road St. Charles, MO 63301	2	ERRATA SHEET I do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said
2 3 4	MCGRAW REPORTING, L.L.C. Certified Court Reporter 2927 Droste Road		ERRATA SHEET I do hereby certify that I have read the foregoing
2 3 4 5	MCGRAW REPORTING, L.L.C. Certified Court Reporter 2927 Droste Road St. Charles, MO 63301 314.704.2727	2	ERRATA SHEET I do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate (with the exception of
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1	ERRATA SHEET	
2	I do hereby certify that I have read the foregoing	
2	deposition and that, to the best of my knowledge, said	
3	deposition is true and accurate (with the exception of the following corrections listed below):	
4	the following corrections listed below).	
5	PAGE/LINE CORRECTION AND REASON FOR CORRECTION	
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25	RICHARD ENGSTROM	
	Page 154	
1	STATE OF MISSOURI)	
) ss	
2	COUNTY OF ST. CHARLES)	
3		
4	I, Sandra McGraw, Certified Court Reporter within	
5	and for the State of Missouri, do hereby certify that	
6	pursuant to agreement between counsel came before me in	
7	the law offices of Crotzer & Ormsby, 130 South Bemiston	
8	Avenue, Suite 602, in the County of St. Louis, State of	
9	Missouri, RICHARD ENGSTROM, who was by me first duly	
10	sworn to testify the whole truth of his knowledge	
11 12	touching the matter in controversy aforesaid; that he was examined and his examination was reduced to	
13	shorthand writing by me on the day, between the hours,	
14	and at the place, and in that behalf aforesaid; and	
15	afterwards transcribed into typewriting, and presented	
16	to the deponent for signature and his said deposition	
17	is now herewith returned.	
18		
19	IN WITNESS WHEREOF, I have hereunto subscribed my	
20	name on this day of, 2015.	
21		
22		
23		
24	Sandra McGraw, CCR #614	
25		

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